

SENATE JUDICIARY SUBCOMMITTEE ON ADOPTIONS

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Senator Joseph A. Rattigan, Chairman

Members

Senator Carl L. Christensen  
Senator Virgil O'Sullivan  
Senator Hugo Fisher

Public meeting of December 5 & 6, 1961

New State Office Building

Los Angeles, California

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## I N D E X

<u>SPEAKERS</u>	<u>PAGE</u>
Judge Ben Koenig	3
Dr. Jacobus tenBroek	60
George W. Whitefield	109
J. M. Wedemeyer	134
Mrs. Eldon Schafer	155
Mrs. Ernest E. Debs	167
Sister M. Stanislaus	172
Robert O. Curran	181
Dr. Robert J. McNeil	187
Charles E. Burch, Jr.	214
David Keene Leavitt	245
Richard L. Mayers	307, 327
Dr. Albert J. Rosenstein	318
Letter from Supervisor Debs	324
Don Shearer	365
Mrs. Edith Haynes	375
Dr. Hoyt Rodney Gale	381
Ernest A. Mitler	385

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Los Angeles, California

Tuesday, December 5, 1961

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CHAIRMAN RATTIGAN: The meeting will please come to order. This is a meeting of the Subcommittee on Adoptions of the Senate Fact Finding Committee on Judiciary.

For the benefit of those in the audience, the Senate Fact Finding Committee on Judiciary was formed pursuant to Rule 12.5 of the Standing Rules of the Senate and consists of nine members of the Senate, all of whom are attorneys.

Senator Edwin J. Regan, of Trinity and Shasta Counties, who is Chairman of both the Interim and Standing Judiciary Committees, stated that it was necessary for the purpose of the work of the Interim Committee to appoint subcommittees to assist in properly studying certain subjects. The various subcommittees will report back to the full committee their findings, conclusions and recommendations.

The members of this Subcommittee on Adoptions are Senator Carl L. Christensen of Humboldt County, who resides in Eureka; Senator Hugo Fisher of San Diego County, to my far left; Senator Virgil O'Sullivan, of Williams, representing Colusa, Glenn and Tehama Counties, seated to my immediate right; and myself, Senator Joseph A. Rattigan of Santa Rosa. I represent Sonoma County. I serve as Chairman of this Subcommittee.

Also present are Mrs. Elda Sayles, seated at the end of the table, counsel to the full Committee, and Virginia

White, seated to my immediate left, Executive Secretary of the Committee; the full Committee.

A substantial public interest exists in the field of civil adoptions and the role of the legal and medical professions within it.

The integral role of the adoption mechanism in the family lives of our statewide community is of obvious importance to all of us. We are deeply concerned with the welfare and happiness of the thousands of children, adults, homes and families affected; with the propriety of any adoption or placement for adoption; and the subsequent need for continuing scrutiny by competent public authority. Sweeping assertions have been made recently concerning illegal or improper activities in child placement, particularly in Southern California.

Public and professional interest in adoptions was dramatically demonstrated during the 1961 session of the Legislature when a number of measures were introduced which would have made vital substantive changes in the existing law of civil adoptions.

The Senate Judiciary Committee on Adoptions proposes to examine the entire field of civil adoptions. This meeting, however, is primarily concerned with the so-called independent adoption proceeding and activities in child placement.

We are particularly interested in the concept and meaning of "placement" itself; in substantiation of charges recently made concerning illegal placement activities, and a review of this limited sphere of activity in the adoptions field.

Future scheduled hearings will soon be announced in order that those areas which we are unable to cover during this hearing may be thoroughly explored.

I should note parenthetically that the members of this Subcommittee have some experience in this field, both in the



professional and personal sense.

We will now call our first witness, Judge Ben Koenig.

May I ask that each witness identify himself or herself at the commencement of the testimony for the record and may I point out that the witnesses may sit -- just a moment. Either place?

MR. HANSON (Soundscriber Corporation): Either place.

CHAIRMAN RATTIGAN: The witness box or the front table at your own convenience.

Judge Koenig, would you identify yourself for the record and proceed, please?

JUDGE BEN KOENIG: My name is Ben Koenig, Judge of the Superior Court, presently sitting in the Department handling adoptions in the Central District.

CHAIRMAN RATTIGAN: Go ahead.

JUDGE KOENIG: I feel that the Committee would probably be interested in the number of adoptions which are filed in Los Angeles County, and a number of adoptions which are heard in the Central District, which is the District over which I have presided for a period of 26 months.

The filings in Los Angeles County over the period of years have run approximately as follows:

1958, 4,329.

1959, 4,592.

1960, 4,656.

In 1961, for an 11 month period, 4,347.

Approximately 60 percent of the adoptions which are filed in Los Angeles County are heard in Department 14. In Department 14 we have instituted certain procedures as a result of certain experiences which other Judges have had in the Department. One innovation was the amendment of our petition for appointment of

guardian so that the printed petition provide that there are no -- that the petitioner would have to state that there are no adoption proceedings, juvenile court proceedings, nor divorce, nor domestic relations proceedings pending or contemplated which would affect such matters, except the following: Except that the petition of amendment for petition for guardianship was so that the Department in which the adoption was held would also hear the guardianship proceedings. This was brought about as a result of a case heard before Judge Clark when he was sitting in Department 14 in which the petition for adoption had been denied, and immediately thereafter the attorney for the petitioners obtained an ex-parte order in the Probate Department where they filed a guardianship proceeding for such child, and the parties departed from the State of California so that the court had no jurisdiction over the child at that time.

In order to meet that particular situation, the court believed that by this conclusion within the petition for the appointment of guardian that it would be flagged insofar as the Probate Court was concerned and that it would immediately be transferred to the particular Department that would be handling the adoption proceeding.

As the result of certain publicities that took place prior to the time that I was assigned to this Department, it was deemed advisable shortly thereafter to institute a program whereby the court would maintain a record of each and every adoption, independent adoption proceeding, and the court developed a form which a copy is - and I will have sufficient copies for each member of the Committee - so that in the event that a question was raised as to whether or not there was an irregular placement, the court would have available to it in its own special file a record of the particular case.

This form was developed because of the irregularities which were called to the attention so that the court obtain from

the parties that appeared in court, petitioners and attorneys, such information which would affect the placement of the child and the fees paid to the hospital, to the doctor, to the natural parents, whether or not the natural parents were represented by counsel, and the fee of that counsel, and the fee paid to the attorney representing the adoptive parents, and the total amount of disbursements which were involved in each particular case.

The Los Angeles County Bureau of Adoptions, in all of its reports to the court, includes a statement of the circumstances of placement in each of the cases as a result of which the court has an opportunity of reading the report prior to the time of the hearing, and at the time of the hearing questioning the parties with reference to the manner in which the placement took place.

After the hearing is conducted, and if the court believes that certain information is contained that should be called to the attention of the State Department of Social Welfare, the court has a transcript of that portion of the testimony prepared and sent to the State Department of Social Welfare. In the past 18 months the court has submitted to the State Department of Social Welfare approximately 250 transcripts of irregular placement. The court has maintained, on this particular form, a record of 700 irregular placements.

SENATOR CHRISTENSEN: Mr. Chairman, a point of order.

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: Is it proper to ask the witness certain questions as we go along?

JUDGE KOENIG: It is all right with me. I have no objection.

CHAIRMAN RATTIGAN: Go ahead, Senator Christensen.

SENATOR CHRISTENSEN: Judge, I mean, you referred



to the transcript. Is it the uniform practice here to have the testimony reported in the final adoption hearing?

JUDGE KOENIG: Yes, sir. We have a reporter in all hearings. But the transcript that I referred to is only that portion which has reference to the placement, not the other portion.

SENATOR CHRISTENSEN: These hearings, are they summarily conducted?

JUDGE KOENIG: We conduct all of the hearings in chambers.

SENATOR CHRISTENSEN: And the child is obviously there?

JUDGE KOENIG: The child is there. The parties are there. Each -- the court interrogates the parties.

SENATOR CHRISTENSEN: With regard to the irregular placement, is that the court's determination that there was some irregularity in connection with this particular placement that caused the court to feel that it was proper to refer it to the State Department?

JUDGE KOENIG: Yes, sir.

SENATOR CHRISTENSEN: As I understand, just refreshing my own memory, the Los Angeles County Bureau of Adoptions has been designated by the State Department of Social Welfare to perform the functions of the State Department in connection with investigations and reports to the court?

JUDGE KOENIG: Yes, sir.

SENATOR CHRISTENSEN: So actually the State Department of Social Welfare, as far as we know, has no further responsibility, having determined that the Los Angeles County Bureau is adequately staffed and competent to perform this function?

JUDGE KOENIG: Except that they are the agent of

the State Department of Social Welfare in obtaining this information.

SENATOR CHRISTENSEN: Actually, the court in this case is really aiding and assisting the State Department of Social Welfare and bringing to its attention, perhaps, something that may have escaped the attention of its agents?

JUDGE KOENIG: No. This is in cooperation with the County Adoption Agency. This procedure was taken up with the presiding Judge of the court, Judge Louis Burke, and the State Department of Social Welfare, the Los Angeles County Bureau of Adoptions, and the procedure was outlined to be followed as we have outlined it to you.

SENATOR CHRISTENSEN: Was it the belief on the part of the court itself that this practice of preparing and forwarding a copy of the transcript was necessary?

JUDGE KOENIG: Yes.

SENATOR CHRISTENSEN: In other words, that there was not sufficient continuing jurisdiction by the State Department of Social Welfare?

JUDGE KOENIG: Well, except that we have this: We have the parties under oath, and what the court did is to inquire further into the placement other than what the adoption worker would have obtained, so that there is a fuller report that would be available to the agency.

SENATOR CHRISTENSEN: Was some basis for this adoption of this procedure a feeling or a belief on the part of the court that the investigation was inadequate?

JUDGE KOENIG: Oh, not necessarily inadequate, but felt that it should be augmented. I have specific cases, which I would like to go into, and I have directed my attention particularly to your item number 8 with reference to any specific knowledge of actual cases of illegal or improper placement.

SENATOR CHRISTENSEN: Go ahead, Judge.

CHAIRMAN RATTIGAN: Proceed, Judge.

JUDGE KOENIG: The first case which I would like to call to the court's attention, I will read it so that all of the facts will be before the court.

"Adoptive parents here had friends who had adopted children through Dr. A, a pediatrician, and were interested in adopting a little boy. So they went to Dr. A and he informed them that he had such a child that would be available for adoption and that afternoon they went to the hospital to see the child.

"Dr. A told them that the adoption would have to go through Attorney B. After they saw the child they went to the office of Attorney B and asked him whether it was possible to adopt the child. And he informed them that it was. The adoptive parents asked the attorney what the fee would be, and the attorney informed them that it would be around \$3,000. The adoptive parents informed the attorney that they felt the figure was exorbitant, that they would not be interested in that sort of a figure, but would think about it.

"The next day the adoptive parents called the attorney and informed him that they did not feel that they wanted to pay that amount of money, even though they would like to have the boy. The attorney informed them that there were plenty of people waiting to take the child.

"A week or ten days later the attorney called



them and stated that he had talked to the natural mother and had made arrangements so that the petitioners would only have to pay \$2,000 and he wanted to know if they were still interested.

"Petitioners informed the attorney the next day that they would take the boy under those conditions. Petitioners and the natural mother never met.

"A breakdown of the expenditures indicated that the obstetrician received \$500; that the birth was a natural birth and there were no complications; that Dr. A, the pediatrician, received \$300. The petitioners testified that Dr. A went to the hospital the day after the child was born and looked him over. Other than that, they were not aware of anything that Dr. A did except to call Attorney B.

"The court asked the petitioner if he had any idea why Dr. A received a fee of \$300. The petitioner replied that he did not know, other than the fact that Dr. A and Attorney B worked together and they each received a fee.

"The natural mother received \$367, according to the breakdown, and Attorney B informed the petitioners that it was for her support during pregnancy when she couldn't work.

"Attorney B's fee was \$500. The court informed the petitioners that the natural mother had informed the adoption worker that she had received no funds for her living expenses, although she had been promised \$200.

They also stated that she had paid all of her own living expenses and that she was referred to Attorney B by Dr. A.

"Attorney C appeared on behalf of Attorney B at the time of the hearing and informed the court that the payment to the natural mother was broken down as follows:

"\$113 for plane fare;

"Room at \$1.00 per day for 122 days;

"Meals at \$1.00 per day for 122 days;

"Maternity clothing, \$10. However, that amount was not paid to the natural mother but was paid to the person in whose home the natural mother was living, and the letter was signed by that woman."

Before I proceed with case number 2 I would like to call to your attention this fact: Under the rules of our court, all of the consents for out-of-state adoptions are heard in Department 14. The consents have to be taken in Department 14 of the Central District.

"In this particular case the natural mother appeared before the court for the purpose of signing her consent to the adoption of her child, which adoption was to take place in the mid-western state. The natural mother was asked whether or not she knew in what state the adoptive parents lived, and she said she did not know and did not want to know.

"Attorney A was asked whether he knew and informed the court that if his client did not want to know that, he felt that it should not be disclosed. The attorney disclosed the

information to the court out of the presence of his client. The information with reference to the out-of-state adoption was referred to State Department of Social Welfare and the Department, and also the Los Angeles County Bureau of Adoptions, and the Department at a later date sent the court a report from the Public Welfare Department of the state where the child was to be adopted.

"After an interview with the adoptive parents that report in substance is as follows:

"That the adoptive parents were informed of a doctor in California who could secure a baby for them; that Dr. A's name was given to the adoptive parents; that the adoptive parents called Dr. A approximately two months before the date the baby was born and informed him that they were interested in obtaining a child; that without asking them any questions whatsoever on the telephone Dr. A assured them he would have a baby for them within three months; that Dr. A suggested that they write him and give him a description of the adoptive parents so that he could 'match a baby to them'.

"No other information was requested by the doctor. The letter was written. Two months later Dr. A called the adoptive parents and said he had a baby for them. Immediately following Dr. A's call Attorney B called from California and explained that he 'works with Dr. A'.



"He gave the adopting family information with reference to the baby. The adoptive parents informed the attorney that they wanted the baby and the attorney told them that either one or both of them could come out to California to pick up the baby and that they should bring \$1,500 to cover expenses.

"The adoptive mother left for California by plane and was met at the airport by Attorney A, who took her directly to his office, where the \$1,500 was paid to him. He informed the adoptive mother that the hospital was \$350, the obstetrical bill \$300, Dr. A's bill \$200, attorneys' fees \$500, and miscellaneous fees \$100, totaling \$1,450. No receipts were submitted to the adoptive mother.

"Attorney B then drove the adoptive mother to the hospital where they met the natural mother without identification of either party to the other. The child was handed to the adoptive mother by a nurse at the hospital and both adoptive mother and Attorney B left the hospital with the baby.

"Attorney B drove the adoptive mother and the baby to Dr. A's office and Dr. A talked very briefly with the adoptive mother. Dr. A informed her that the baby had a good healthy background and gave her a copy of the baby's formula. Nothing further was discussed and within a few minutes the adoptive mother and the attorney left the doctor's office.

"The attorney had made a hotel reservation

for the adoptive mother, then drove her to that hotel. The attorney informed her that he could not drive her to the airport the next day for her return to the mid-western state."

Case number three:

"Five months after the court had heard the consent in case number two, the Department of Social Welfare sent the court some correspondence with reference to a similar type of case as case number two, emanating from the same state and the same county where the adoptive parents were acquainted with the adoptive parents in case number two. Such correspondence related that the adoptive parents in this case had called Dr. A, the same doctor as in case number two, at approximately the same time that the adoptive parents in case number two had received their child here in California, and informed him of their interest in adopting a child through him.

"Dr. A informed them to talk to Attorney B, who was the same attorney as in case number two; that he, Attorney B, would be in a better position to give the details of such an arrangement. The adoptive mother then called Attorney B and he asked her many questions with reference to their marriage, their health, physical description and income.

"Attorney B explained that they tried to match a baby to a family and assured the adoptive mother that he could find a suitable

child within a couple of months.

"Attorney B promised to call the family when the baby was born and mentioned that they should have \$1,400 ready for expenses. Attorney B indicated that they could either send the money then or wait until the child was born. In any event, the money would be placed in a trust account pending the delivery of the baby.

"The family chose to wait until the baby was born. Approximately two months later Attorney B called the adoptive parents to inform them they were the parents of a new baby boy born earlier that morning. He informed them of the weight of the baby, color of his eyes and hair, and stated that the child was in good physical condition. The attorney spoke to them on Wednesday and requested they come to California on the following Friday to pick the child up.

"Attorney B met them at the airport and took them to the hotel by cab. After the adoptive parents received information about the child, they sent \$1,400 to the attorney. The attorney suggested to the adoptive parents that they retain a certain attorney in the area in which they lived and that his fee would be \$200, plus court costs. The breakdown to the adoptive parents was \$200 to Dr. A, \$350 to Dr. C, \$250 to the hospital, which was the same hospital as in case number two, \$100 miscellaneous, and \$500 to Attorney B.



"After checking into the hotel, Attorney B took the adoptive parents to the hospital and then to the office of Dr. A who examined the baby briefly and stated that he was in good health. Attorney B then took the adoptive parents to a small apartment where they supposedly met the natural mother very briefly. Attorney B then gave them some information about the natural mother.

"The adoptive parents returned to the mid-western state the very same day."

With reference to case number four:

"The adoptive parents were referred to Dr. A by friends. Dr. A, a pediatrician, interviewed them and referred them to Attorney B. They communicated with Attorney B and explained their wants and he at a later date called them with reference to the adoption. The first child that he offered them was turned down. At a later date he called them with reference to another child and they told him to go ahead. Attorney B told them the financial arrangements would be from \$1,200 to \$1,600 and that his fee would be \$1,000. The attorney was paid \$1,400, \$1,000 of which represented his fee. The balance was for hospital and doctor.

"Dr. C referred the natural mother to Attorney B. Attorney B stated to the court that the natural mother was staying with a girl who had placed a child for adoption through his office also, and that she had also gone to

Dr. C."

In case number five I made a summary of 11 cases which were filed by one attorney and heard within a period of two months in which the following information was disclosed. That shouldn't be case number five. It is a series of cases that I reviewed.

That the total amounts paid by the adoptive parents ranged from \$1,900 to \$2,500.

That in three cases the attorney's fee was fixed at \$500; in seven cases the attorney's fee was fixed at \$750; and in one case at \$1,000.

That the same pediatrician appeared in all cases and that he obtained fees as follows:

\$200 in three cases and \$50 in each of the balance of the eight cases.

That in each of the nine cases the obstetricians charged a fee of \$500; in one case \$300; and in another case \$260.

That payments to the natural mother ranged from nothing to \$300.

That the natural mother never met any of the adopting parents in any of the cases.

That subsequent to the publicity of the investigation with reference to the investigation by the State Department of Social Welfare, refunds were made by this attorney to the adoptive parents before the date of hearing from nothing to as much as \$1,200.

Cases number 6 and 6-A:

"Dr. A, a pediatrician, referred the adoptive parents number one to Attorney B. After the child was born the child was removed from the hospital by Attorney B and

the child was received by the adoptive parents number one at a nursing home. The natural mother attended by Dr. C and obstetrician. Natural mother visited by Attorney B at her home and told her he knew of a family waiting for a child. She gave him permission to remove the child from the hospital.

"Adoptive parents number one had child for a period of 45 days, then returned the child to Attorney B because the natural parents were too tall. They paid the attorney \$1,000 and received a refund of \$500.

"The child was again placed in a nursing home. The adoptive parents were referred to Attorney B by Dr. D, and adoptive parents number two were offered the same child that was in the home of adoptive parents number one. They were given the address of the nursing home and picked up the child. The fee was \$1,750. Hospital, \$255; Dr. C, \$250; nursing care, \$60; pediatrician, \$75; support of the natural mother, \$375, which is broken down 175 for transportation and \$200 for support.

"The legal fee represented to the court as \$370 with a credit to be paid to the adoptive family number two of \$365, which credit was not remitted to the adoptive parents at the time of the hearing.

"Attorney B claimed that such credit was due for the reason that adoptive family number one had paid an attorney's fee. Adoptive



parents number one at a later date adopted another child through Attorney E, and Dr. A helped them find this child together with Attorney E. The adoptive parents paid Attorney E \$2,100, broken down as follows:

"Natural mother, \$200.

"Dr. F, \$500.

"Attorney E, \$500.

"Hospital, \$211.

"Dr. A, \$200, and before the hearing Attorney E refunded \$461 through the adoptive parents."

This is one of the cases which the court, which I referred to on the series of 11 cases.

In case number seven the child was born at the Camarillo State Hospital. The mother had been there for a period of six months.

"The child was placed in a boarding home by the Los Angeles County Bureau of Adoptions. Upon the release of the mother from Camarillo, the child was placed by the mother in a private boarding home, taken away from the home in which the Bureau of Adoptions had placed the child. The adoptive parents received the child from a private boarding home a few days later. The natural mother was represented by Attorney A, the adoptive parents by Attorney B. The pediatrician was Dr. C.

"The natural mother was paid a total of \$750, which included an item of approximately \$200 to reimburse her parents for the support of her daughter, \$150 for a Chrysler automobile,

and \$300 to cover the support after her release from Camarillo for a period of approximately three months together with a tuition to attend a college.

"Each attorney was paid \$500, the adoptive parents' attorney and the natural mother's attorney.

"The child boarding home fee, after taken from the county boarding home, was \$60. The pediatrician, \$220. The total amount paid by the adoptive parents was \$2,150, and prior to the hearing a refund was made of \$109.

"The above amount does not include any medical charges for the delivery of the child, or for prenatal or postnatal care, nor for the hospital charges at the time of the delivery of the child because the child was delivered in the Camarillo State Hospital."

In case number eight the adoptive parents were referred to Dr. A by a friend.

"Dr. A told them about the natural mother and then referred them to Attorney B.

They did not meet the natural mother, but paid a \$500 bill to Dr. A. However, at the time the baby was to be delivered Dr. A was not available and Dr. C, a friend of Dr. A, delivered the child. The hospital bill was \$170, and Attorney B's fee \$300.

"The natural mother informed the adoption worker she could not learn anything about her baby and that Dr. A refused to answer any questions about the baby while she was

at the hospital, or at the time of her six weeks after birth appointment.

"The court requested that Dr. A appear in court. At the time of his appearance in court he was informed of the natural mother's statement. He stated that he knew nothing about her wanting to see the baby or about any questions which she claimed she asked about the child. He was asked about his fee of \$500, and whether or not it was customary in the medical profession to charge a fee on the ability of the patient to pay. He claimed it was an individual matter and if one values their work at such a point, then that is the way the fee is arrived at and that the ability to pay did not enter the picture.

"The court asked the following question: 'If the adoptive parents were not in the picture, what would your fee have been to the natural mother?'

"His answer: 'It would have come to about \$350, between 300 and \$350.'

"The court then stated to him that, 'In view of the fact the adoptive parents were adopting the child, you felt you could charge a fee of \$500?'

"He stated, 'Not just in view of that fact, but rather I felt in these cases the fee is justifiably countenanced.'

"The court's next question was: 'What is your reason for such justification?'

"His answer: 'Number one, I feel there is



a lot more effort entailed on my part for this type of work. I feel that it directly conflicts with my own work, which is my bread and butter, and that for me to undertake this type of situation, that monetary rewards are poor enough rewards for even handling this type of procedure.'

"He further explained, 'There is more effort, there is more time consumed, more risk, more hazard, and I feel in order for me to take this upon myself, in addition to my regular practice, I feel that this is the way I arrive at my fee.'

"Question by the court: 'When you say "this", are you referring to adoptions?'

"Answer: 'That's right.'

"Question by the court: 'Well, do you consider that you are charging a fee because you were responsible for the placement of this child?'

"Answer: 'No, sir, for the delivery of the child.'

"'Well, why is there any greater risk in this type of case where this is an adoption than there would be otherwise?'

"Answer: 'Well, let's put it this way: On one particular occasion we had an adoption that backfired. The mother, after six or eight weeks, came and took the baby back from these people and I felt at the time very keenly about it. It was a heartfelt situation, and as far as I was concerned I

made up my mind at that time if I were to handle it at all, it is just not worth it to me unless I arrive at a fee in some measure that would compensate me for the time and effort and mental aggravation that was entailed. Incidentally, I might also mention that in this particular case the money was completely refunded to the people that adopted the baby, and that is the stipulation, or I won't handle the work at all. If, for any reason, the people do not get to retain custody of their child at any time, one month or ten years later, their money will be completely refunded. And this has been my word.'

"Question: 'You haven't refunded any money in this case?'

"Answer: 'Because the adoption procedure was consummated. To this date, as far as I know, the baby is still in the custody of the adopted parents. But if for any reason they don't get to keep this child, it will certainly be refunded and I have made this known. And I might also mention that this fee of \$500 represents a flat fee. If there is any complications or necessity of further work, whatever they may be, the fee will be the same, whether it be house calls, or additional hospital calls, or surgery involved, or circumcision if it is a baby boy. It is all one fee, so, actually, the two fees approximate each other pretty closely

because, if the patient were my private practice, I would charge additional for the complications that might arise and they fairly well balance out.'

"'Doctor, this child was born September 8, 1960. Since that time have you seen this child?'

"'No, not the child. The mother I saw at six weeks.'

"'The natural mother?'

"'That's right.'

"'You haven't seen her since that time?'

"'Not since the six week checkup.'

"'And you did not deliver this child, did you?'

"'I was away at the time and Dr. Blank was kind enough to say he would cover my obstetrical case.'"

Case number nine.

CHAIRMAN RATTIGAN: Excuse me, Judge. How many cases do you propose to refer to?

JUDGE KOENIG: Well, I will go as far as you would like me to go. But I would like to give this case to you because I feel it has a little different angle.

CHAIRMAN RATTIGAN: All right, would it be agreeable to you to stop the specific case references after this?

JUDGE KOENIG: Submit these?

CHAIRMAN RATTIGAN: So if there are questions from the Committee we can intertain them now?

JUDGE KOENIG: Surely.

"In this case the petitioners deposited with Dr. A, an obstetrician, \$1,700 several months before the child was born. Dr. A



paid the natural mother \$300, he paid another doctor for prenatal care \$350, he retained for himself \$700. He paid the hospital \$202. \$50 to an attorney for drawing up a memorandum to be signed by the adoptive parents, which specifically states that the \$1,700 is a 'packaged total cost item,' and also 'we acknowledge we have consulted Dr. A and have requested him to place us in contact with the natural mother so that we might be fortunate enough to secure a baby for adoption.'

"The above amount does not include attorneys' fees. The adoptive parents retained their own attorney."

Now, there are many others which have different facets to them, which is an indication as to the amounts paid. We have various amounts paid to natural mothers. I have a case here in which the adoptive parents had an annual income of \$5,760 and the total cost to them on the adoption was \$1,800. The doctor charged \$535, the attorney received a sum pretty close to 900 and some dollars. The doctor in the communication to the court justified his charges as being reasonable by the following statement:

"Usually, and this case was no exception, an unmarried girl who finds herself in this condition requires time and services additional to those usually spent on a similar case involving a married couple. The girl usually has no one with whom to discuss her problem, as she does in the case where she has a husband. Consequently, her office visits are more frequent and longer. Add to the

foregoing the fact that a number of these cases, the natural mother changes her mind. Such change of mind usually is accomplished by a failure to pay accrued charges and change of address or departure from this area. Collection of these charges is impossible for practical purposes.

"Such failure to pay on the part of these girls necessarily increases the cost of handling any other like cases which happen along."

We have cases in which the attorneys for the natural mother received a fee of \$750 and the fee for the adoptive parents who handled the hearing in court received a fee of \$250. The child was obtained through the attorney for the natural mother.

We have cases in which \$1,000 - a case, specifically, in which \$1,000 was paid to the natural mother, \$200 a month for a period of five months.

Those cases that I am not specifically submitting to the Committee by my testimony I will be glad to give a set of these cases as I have prepared them for the Committee so the Committee would have the benefit of such synopses of such cases.

CHAIRMAN RATTIGAN: I think they would be very helpful. Are you at liberty to do that today?

JUDGE KOENIG: Yes. I can give you one copy. I can give you my copy and I have a copy in my files.

CHAIRMAN RATTIGAN: All right, just one will suffice. We can duplicate it.

JUDGE KOENIG: Yes. And one case which came to my attention, which I neglected to ferret out of the group, was a case in which the attorney, several months before the child was born, made a deposit with a hospital of approximately 150

to \$275, and that was before there were any adoptive parents and before the child was born. The receipt was made to the attorney.

We have cases in which the attorneys have paid the natural mother moneys before the child birth, before there were any adoptive parents seen or talked to.

CHAIRMAN RATTIGAN: Are there any questions from the members of the Subcommittee? Senator Christensen?

SENATOR CHRISTENSEN: Judge, you referred to one case there, I believe it was case number eight or eleven, anyway in which it involved a statement by the doctor that there was, in all of these cases, as he referred to them, the fees paid to him were to be returned to the adoptive parents.

JUDGE KOENIG: He said that if for any reason the matter didn't go through --

SENATOR CHRISTENSEN: That's right.

JUDGE KOENIG: Yes. That was case number eight, I believe.

SENATOR CHRISTENSEN: Number eight. Did that also have reference to the fees paid the attorney?

JUDGE KOENIG: Oh, no.

SENATOR CHRISTENSEN: That was just the doctor?

JUDGE KOENIG: That is just the doctor's fee.

SENATOR CHRISTENSEN: You have also referred here to Dr. A, and Lawyer B, and Lawyer C.

JUDGE KOENIG: These are not necessarily the same doctors or the same lawyers. This is just for the purposes of designation.

SENATOR CHRISTENSEN: Whether or not they are the same particular individuals, do they refer to a same individual who more than once appears in the statements as to the Dr. A or Lawyer B or Lawyer C?

JUDGE KOENIG: In most of the cases that I have given there are certain doctors that run through a great number



of cases, there are certain lawyers that run through a substantial number of cases.

SENATOR CHRISTENSEN: With particular reference to where your paper referred to Lawyer B, or Lawyer C, or Dr. A, is there any identity at all? Are each of them separate individuals in those eleven cases that you have referred to?

JUDGE KOENIG: You mean are they different doctors and different lawyers?

SENATOR CHRISTENSEN: Yes.

JUDGE KOENIG: No, not necessarily. I have that information available any time that the Committee is desirous of obtaining it.

CHAIRMAN RATTIGAN: Do you have it with you now?

JUDGE KOENIG: Well, I have it in my transcript files, and the way I could designate it is by number of attorney. I can specifically refer to each one of these cases and give you the numbers.

CHAIRMAN RATTIGAN: Could you do that by --

JUDGE KOENIG: I can't do it now.

CHAIRMAN RATTIGAN: -- letter?

JUDGE KOENIG: Oh, yes. Yes.

CHAIRMAN RATTIGAN: Could you?

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: I think that would be a helpful supplement to our record. Senator?

SENATOR CHRISTENSEN: One further question.

JUDGE KOENIG: I will take each case and indicate at the bottom of each numbered case the parties directly involved. Is that the way you want it?

CHAIRMAN RATTIGAN: Yes. And I think we would like to get an idea of the actual number of attorneys.

JUDGE KOENIG: Oh, I can tell you that.

CHAIRMAN RATTIGAN: Within this actual number of cases?

JUDGE KOENIG: Well, let's put it this way: In a group of cases -- well, I shouldn't stick my neck out that far. I want to be accurate in giving you the information. But it runs about 50 attorneys and 50 doctors in a group of cases, not particularly this group which I am talking to you about now.

CHAIRMAN RATTIGAN: Senator?

SENATOR CHRISTENSEN: Amongst those 50, is there usually this forwarding or working together arrangement between a particular doctor and a particular lawyer?

JUDGE KOENIG: Yes, sir.

SENATOR CHRISTENSEN: Now, to change the direction a little, in all of these cases these facts come to light to the court upon a final hearing upon the petition for adoption?

JUDGE KOENIG: Yes, all recorded transcripts are available.

SENATOR CHRISTENSEN: Normally, they are not brought on for hearing until there is a report?

JUDGE KOENIG: Oh, yes.

SENATOR CHRISTENSEN: Of the investigating agency?

JUDGE KOENIG: Yes. Except that the Legislature has, in amending 226, done the court a good turn, because at that time we can hear the cases much more rapidly and I want to commend the Legislature for doing what they did in the last session.

CHAIRMAN RATTIGAN: What is that, Judge?

JUDGE KOENIG: By amending Section 226. As soon as the agency determines that there may be some difficulty in the placement of the child, the agency immediately sends through

the report, what we designate in this area an initial report, and the court immediately sets the case for hearing, as a result of which the child does not remain in the home any protracted period of time and, if it is necessary to take the child from the home, the child can be taken from the home immediately without the relationship existing --

CHAIRMAN RATTIGAN: Yes, I recall the bill now.  
Go ahead, Senator.

SENATOR CHRISTENSEN: In any event, before there is any kind of a hearing there is some report --

JUDGE KOENIG: Oh, yes.

SENATOR CHRISTENSEN: -- initial or final report?

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: Involving some recommendation by the investigating agency?

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: In this case, the Los Angeles County Bureau of Adoptions?

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: Now with reference to these particular cases that you referred to, can you state whether or not the recommendation in those cases of the investigating agency was favorable?

JUDGE KOENIG: Well, I can state it quite generally, Senator, that in practically all of the cases the recommendation is favorable. And in practically all of the cases, and I don't know of any one of them, but those that I sat on, and there is only one in this group that I didn't sit on, I have granted the adoption. But that isn't a factor which we use in determining whether or not there is an irregularity. That is a factor in determining what is for the best interests of the child.



SENATOR CHRISTENSEN: That's right. Now, in connection with the content of the report then before the court recommending it or not recommending it, whatever the report was, does that report normally include any reference to the matters such as we have referred to here? That is, who was paid the fee?

JUDGE KOENIG: Yes, sir. Yes, sir. Well, not who. In some cases they mention the name of the attorney, and others they say the natural mother's attorney or the petitioner's attorney. But in most cases, it depends upon the adoption worker in the presentation. In most of the cases they mention the names of the particular parties involved. And if they don't do it in the report, we make a record, as indicated on our form there, and also for the record that is transcribed, of the names of the doctors and the lawyers, and other persons, whether they may be ministers, rabbis, priests, nurses, et cetera.

SENATOR CHRISTENSEN: In other words, the social worker or the adoption worker does refer in the report submitted to the court the investigation in connection with the placement activities of these various persons, whether they be doctors, lawyers, ministers, or whoever they may be?

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: Are they complete enough in their reference to this particular phase of it, or does the court itself have to exact from the attorney or the adopting parents at the time of the hearing the facts such as you referred to here?

JUDGE KOENIG: Well, I have some of the reports here. You will notice that on the bottom of that sheet which is prepared we type in the portion of the placement report. And I can give you an idea.

Incidentally, I do have all of the transcripts that are involved in these cases here. This is an example of

how the report breaks down the information, and that is just a specimen, and you see the number of cases on top there so you will be able to tell which case it is.

SENATOR CHRISTENSEN: Well, the thought occurs to me, Judge, that the adoption worker has normally been in charge of this adoption for a number of months prior to the time that the recommendation is made.

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: The court has certain limited opportunities to inquire into all of these facets of the placement activities of various people.

Have you any comment to make with reference to whether or not the investigation of the adoption worker is adequate in this particular field of placement activities, if we may call them that?

JUDGE KOENIG: Whether the report is adequate?

SENATOR CHRISTENSEN: Whether their investigation is adequate, whether disclosed by the report or not.

JUDGE KOENIG: Well, Senator, all I can say is that it is dependent upon the information that they receive from the adoptive parents. They would have great difficulty in obtaining information from the professionals. By "the professionals" I mean the doctors and the lawyers. There would be a hesitancy on the part of those professionals in submitting that information.

SENATOR CHRISTENSEN: Irrespective of whether there is any hesitation or not, does the report of the social worker point up in the report to the doctor that they have encountered any difficulty in pursuing, as far as they want to pursue, their investigation with regard to these placement activities?

JUDGE KOENIG: Well, I think that the adoption

worker gives the court as much information as she can possibly obtain and then it all depends upon the individual worker as to his or her efficiency.

SENATOR CHRISTENSEN: Is this true, then: That the adoption worker renders a report which contemplates there will be further inquiry with regard to what the report may indicate by the Judge himself?

JUDGE KOENIG: Well, here is a copy of this report which the adoption worker in that case that I have just shown you submitted. I think the adoption worker in this particular case has done an excellent job of submitting to the court the information for the purpose of inquiry. And I do think it is necessary for the court to make inquiry, even though the adoption worker may have covered it quite thoroughly.

SENATOR CHRISTENSEN: Well, to get to the crux of it, do you feel there is any necessity for legislation requiring the adoption worker, or the report submitted by the adoption worker, to be more inclusive than it presently is, or to require that these facts be developed rather than depending upon the court?

JUDGE KOENIG: My personal opinion is that it is not necessary for any legislation for the adoption worker to be more specific in submitting that information. I think it is the duty and the responsibility of the adoption worker to give that information to the court the same as it is of a probation department in submitting a probation report to the court. And I don't think there has ever been any question as to that authority.

The only thing that has happened, as I understand it, is that in some areas the counties that submit reports do not include in their reports the circumstance of the placement. It would seem to me, from the experience that we have had in



this area, that every county, every investigating agency, should submit to the court the circumstance of the placement of the child so that the court would have the benefit of that information and could make due inquiry at the time of the hearing.

SENATOR CHRISTENSEN: You state you don't feel there is any necessity for legislation in that field?

JUDGE KOENIG: I meant with reference to an adoption worker, including that information in the report, because I think that is inherent in the investigation.

SENATOR CHRISTENSEN: Apparently some of these facts were only developed by the Judge himself.

JUDGE KOENIG: Yes.

SENATOR CHRISTENSEN: Even though, do you feel that administrative action is indicated to require by the particular agency of the adoption worker to contain that within the report?

JUDGE KOENIG: Well, if they don't do it, I think that it is. I think that it is very essential for the court to have that information available to it.

SENATOR CHRISTENSEN: No question about that. The question is whether or not, in my mind, at least, we are saddling the court, which has many functions to perform, with a duty which might more effectively be performed by an adoption worker who has been assigned this case for the specific purpose of investigating every possible facet, as I see it, which would be of significance in the adoption proceeding.

JUDGE KOENIG: Well, there is only one additional factor, Senator, and that is that the parties are under oath at the time of the hearing, you see, whereas at the time of the investigation they are not.

Now, you may wonder why I have proceeded the way I have in this area, but for eleven years I was a member of the

State Social Welfare Board, I was its Chairman for ten years, so that at the time of the investigation by the Senate in 1953, which is just a year after I had left the State Social Welfare, Senator McBride, in his report, made a recommendation that the court should make inquiry with reference to these charges of cost of care to the mother, and the care of the child, and the legal, medical and other professional services related to the adoption, as may be determined to be actual and reasonable.

I felt that this is something that should be done by each and every court, and when I was assigned to this department I instituted that procedure.

SENATOR CHRISTENSEN: Well, Judge, in my opinion, I have nothing but the highest of commendation for the court's activities.

The question is whether or not why does the court have to do all this if we have an adoption worker that is specifically assigned the case?

JUDGE KOENIG: Well, I can only say this to you, Senator: That my predecessor gave out a story with reference to some activities in this area, and upon my inquiry as to the specific cases he said, "Well, I just read them." And that is what made it necessary for me to keep a record so that I would have something that I could turn to for a hearing just as this is.

SENATOR CHRISTENSEN: One further question, and that is in any of these cases that have come before you, Judge, is there any indication there has been any participation in these placement activities by the adoption worker herself or himself?

JUDGE KOENIG: No, none.

SENATOR CHRISTENSEN: Is there any indication that there has been a failure to pursue, perhaps, the placement

activities in certain individuals without amounting to any participation in the placement by the adoption worker?

JUDGE KOENIG: I have not had any such matter before me at any time.

SENATOR CHRISTENSEN: Thank you, Judge.

SENATOR O'SULLIVAN: I have a couple of questions. One of them, in the cases that you have given, is there any instances in those cases, or any others that you have, where the subsequent examination showed that the adoption was not a proper adoption in any way, or should not have been made, should not have been allowed?

JUDGE KOENIG: Should not have been allowed?

SENATOR O'SULLIVAN: Yes. Do you know of any instances?

JUDGE KOENIG: Well, we know that in some cases the families broke up, but I don't think that --

SENATOR O'SULLIVAN: This happens in ordinary adoptions, doesn't it?

JUDGE KOENIG: Oh, sure.

SENATOR O'SULLIVAN: Whether through an agency or what, you sometimes have that?

JUDGE KOENIG: Oh, yes. Oh, yes.

SENATOR O'SULLIVAN: It is one of the risks that a natural child has, too.

JUDGE KOENIG: That's right. You see, it may be very difficult to find out just how these parties feel, and they won't disclose it to the worker nor do they disclose it to the court. They maybe just want this child for the purpose of re-cementing their own relationship and the child hasn't been the means of doing that.

SENATOR O'SULLIVAN: Do you have any feeling that this may be more common in the cases of these independent



adoptions as opposed to the agency adoptions?

JUDGE KOENIG: I haven't any information to that effect.

SENATOR O'SULLIVAN: In the field of fees, do you feel that the court should properly have the jurisdiction over the fixing of reasonable fees to attorneys in these cases?

JUDGE KOENIG: Yes, I do.

SENATOR O'SULLIVAN: And this could very well be done within the realm of the court jurisdiction if we passed a statute, couldn't it?

JUDGE KOENIG: Yes, sir.

SENATOR O'SULLIVAN: Do you think that the petition should be required to contain the information as to the fees of the attorneys?

JUDGE KOENIG: Oh, I think --

SENATOR O'SULLIVAN: Or do you think it should be evidentiary?

JUDGE KOENIG: Well, the only question about that, Senator, is that there are services still to be rendered after the filing of the petition.

SENATOR O'SULLIVAN: Well, I understand.

JUDGE KOENIG: Unless there is agreement between the parties as to what the fee would be, and in these cases there usually have been packaged deals and the parties have been given an accounting of some kind just about the time of the hearing.

SENATOR O'SULLIVAN: I am speaking now of the hearing on the adoption.

JUDGE KOENIG: Yes, I mean the hearing on the adoption.

SENATOR O'SULLIVAN: But in the hearing on the adoption which takes place sometime after the placement, actual placement, a year, isn't it?

JUDGE KOENIG: Well, independents are much less, sometimes.

SENATOR O'SULLIVAN: But at that time would you require that as part of the jurisdictional requirements, not jurisdictional in a power sense, but jurisdictional in a statutory sense, that the statute should require that the petition contain an allegation as to what the entire attorneys' fees involved in the whole transaction are or will be?

JUDGE KOENIG: Well, I see no harm in it, if it can be done. The unfortunate part about this, if the court could have some jurisdiction with reference to the fees that the doctors charge, the doctors seem to be --

SENATOR O'SULLIVAN: I was going to come to that next. I was going to take care of the attorneys' in the first question. You wouldn't find any objection in the case --

JUDGE KOENIG: No.

SENATOR O'SULLIVAN: -- of the attorneys? I mean, it is pretty much accepted that the court can fix their fees?

JUDGE KOENIG: Well, unless it were indicated by statute, there seems to be some question.

SENATOR O'SULLIVAN: Yes, we could provide for that.

JUDGE KOENIG: Yes. I think it would be a very good idea. I think that some of these fees that I have related to you are unconscionable and I believe that some of the activities here are a pretty good indication of commercial exploitation.

SENATOR O'SULLIVAN: Actually, what you have here is a contingent fee based upon whether or not a particular adoption is going to be successful, so a larger fee is charged to cover those in which you are not successful and have to be refunded, isn't that what you mean?

JUDGE KOENIG: Senator, I --

SENATOR O'SULLIVAN: So you actually have an attorney engaged in the practice of placing babies?

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: Isn't that right?

JUDGE KOENIG: That's right. Now, Senator, all of you are lawyers, and you know how much work that there is in an adoption proceeding, and in our manual we have gone even further to help the lawyers in preparing practically all of their forms for them, and when a natural mother is charged a fee of 500, 750, or \$1,000, I mean, she isn't charged, the adoptive parent pays it, you see --

SENATOR O'SULLIVAN: The adoptive parent, yes.

JUDGE KOENIG: But, after all, in all the years that I have practiced law, that is since 1921, it was my understanding that we charged fees in accordance with the abilities of our own clients to pay and the measure of the services which we rendered to the particular client. And I don't think it is the rule which has been used in the establishment of fees in these cases, either for the lawyers or for the doctors.

SENATOR O'SULLIVAN: You could trap yourself on the theory of ability to pay, if the attorney represented the adoptive parent.

JUDGE KOENIG: Yes, if it was a legitimate -- if it was a legitimate representation. Some of these representations are not too legitimate when they are brought into the picture only for the purpose, and through the doctor or some intermediary, in order to represent them for that particular matter.

SENATOR O'SULLIVAN: Well, the court now approves fees, must approve fees and manage compromises, doesn't it?

JUDGE KOENIG: Yes.

SENATOR O'SULLIVAN: And it would be reasonable in



your opinion in this case of adoptions to have them approve all attorneys' fees?

JUDGE KOENIG: Yes, sir.

SENATOR O'SULLIVAN: You feel also that they ought to be able to scrutinize and approve or disapprove the medical fees, too?

JUDGE KOENIG: Yes.

SENATOR O'SULLIVAN: Do you have any theory on which you think we ought to base that?

JUDGE KOENIG: No, sir.

SENATOR O'SULLIVAN: You just think we ought to be able to do it?

JUDGE KOENIG: I would like to find a theory for it.

SENATOR O'SULLIVAN: And you think there ought to be full disclosure of all --

JUDGE KOENIG: Except on the workmen's compensation cases, it is done, but that doesn't have anything to do with it.

SENATOR O'SULLIVAN: You think there ought to be absolute and full disclosure of all fees charged by attorneys and doctors involved?

JUDGE KOENIG: Yes, sir.

SENATOR O'SULLIVAN: Investigators or anyone else?

JUDGE KOENIG: Yes, sir. We have a case here in which the attorney charged a \$200 fee for the investigator, The investigator's report was a page and a half legal size double-spaced. All he said was the mother was married, has three children and seems to be all right. That's all he said in his investigation, and he received \$200 in one of these cases.

SENATOR O'SULLIVAN: How many cases do you have where an attorney has hired an investigator to investigate?

JUDGE KOENIG: That is the only one.

SENATOR O'SULLIVAN: That is the only one? Thank you.

CHAIRMAN RATTIGAN: Judge, did I understand you to say you don't consider legislation necessary which would require this financial disclosure by the parties to the court?

JUDGE KOENIG: No. I said it is not necessary to require any legislation for the investigator to obtain that information.

CHAIRMAN RATTIGAN: I am going back a little bit further back in your testimony. Senator Christensen asked you about the necessity of the legislation requiring the disclosure of these financial transactions.

JUDGE KOENIG: I do it. I mean, I do it as a result of the report from the Los Angeles County Bureau of Adoptions, the agency that makes the investigation.

CHAIRMAN RATTIGAN: I am now asking you, do you consider it necessary that there be a statute requiring that such disclosure be made?

JUDGE KOENIG: If there is any doubt, then I do think there should be a statute.

CHAIRMAN RATTIGAN: Do you recall a bill to that effect in the recent session of the Legislature, Assembly Bill 2863?

JUDGE KOENIG: Yes. I was in favor of it. I think I notified the members of this Committee to that effect.

CHAIRMAN RATTIGAN: And that would have required a disclosure along the lines that you now --

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: -- require in your practice --

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: -- in Department 14? What I am getting at is this: Suppose in the absence of such legislation

you request such a disclosure and the parties refuse to give it to you. What do you do then?

JUDGE KOENIG: Place the matter off calendar.

CHAIRMAN RATTIGAN: You would not act upon the petition?

JUDGE KOENIG: No, sir.

CHAIRMAN RATTIGAN: In your opinion, then, the refusal to make such a disclosure is sufficiently against the best interests of the child so that you should not enter a decree of adoption?

JUDGE KOENIG: That's right. And I may even go further. If the adoptive parents are willing to subscribe to that kind of activity, they may not be the right type of parents to have the child.

CHAIRMAN RATTIGAN: I am not suggesting that they subscribe to that kind of activity. I am only suggesting that they won't answer your questions.

JUDGE KOENIG: Well, failure to answer the questions is what I have reference to, because it is their duty to disclose all of the information to the court if they are desirous of obtaining this particular child. The court is making inquiry as to their fitness. That may go to their fitness.

CHAIRMAN RATTIGAN: That is my precise point, what their duty is when the question is propounded in the absence of statute.

JUDGE KOENIG: I think it is, although I did feel if there is any doubt, that it should be included in a statute.

CHAIRMAN RATTIGAN: But in your Department, and in the absence of such statute, a person who does not make a disclosure cannot adopt the child, is that right?

JUDGE KOENIG: Well, let me put it this way,  
Senator: So far nobody has refused to give the information.



CHAIRMAN RATTIGAN: I am speaking of the hypothetical case where one might.

JUDGE KOENIG: That is in the period of 26 months in that Department.

CHAIRMAN RATTIGAN: But if and when there is such a refusal, that adoptive parent will not adopt that child, is that right?

JUDGE KOENIG: I won't say that. There may -- because I haven't had that experience.

CHAIRMAN RATTIGAN: Of these, and I am recapitulating some figures you gave earlier in your testimony, you referred to 700 irregular placements and 250 reports of such sent to the State Department of Social Welfare?

JUDGE KOENIG: That's right.

CHAIRMAN RATTIGAN: What is the difference between the 250 irregular placements reported to the State and the 450 irregular placements not reported to the State?

JUDGE KOENIG: The court felt that those 250 cases had certain facets which should be called to the attention of the State Department. Others were run-of-the-mill, the amounts involved were nominal, but the placement was irregular in some respect: The parties did not meet each other, and a reference was made by some person to a professional, whether it was a doctor or a lawyer, but in the 250 cases there were specific violations which stood out very strongly and should have been called to the attention of the Department.

CHAIRMAN RATTIGAN: These figures you gave us regarding the filings in the period of four years, per year figures, are they total adoptions or independent adoptions?

JUDGE KOENIG: These are totals.

CHAIRMAN RATTIGAN: What percentage of those figures in a given year would be independent adoptions?

JUDGE KOENIG: Well, anticipating that that question might be asked, we ran a survey for the months of July, August, September, October and November.

CHAIRMAN RATTIGAN: Of this year?

JUDGE KOENIG: Yes. And we found that -- and these are hearings, not filings, you see; hearings on cases. And in July there were 90 independents against 76 agency.

In August, which is the month I was on vacation, there were 47 independents against 43 agencies.

In September there were 92 independents against 79 agency.

In October there were 127 independent against 112 agency.

In November there were 88 independent as against 63 agency.

Now, those independents may include related children, too. We haven't broken it down to that extent, you see. By that I mean the grandparent adopting the child.

CHAIRMAN RATTIGAN: And these 700 irregular placements that were identified were identified over a period of time?

JUDGE KOENIG: Eighteen months.

CHAIRMAN RATTIGAN: And similarly the 250 sent into the State Department of Social Welfare?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: From the same period of time?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: 250 from among these 700?

JUDGE KOENIG: That's right.

CHAIRMAN RATTIGAN: You mentioned your practice, and it is set forth in your manual, "Adoption Procedures in Superior Court, Los Angeles County", the practice of taking

consents to out-of-state adoptions.

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: In your Department?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: Is this done only in adoption proceedings pending in states which require that the consent be taken in court?

JUDGE KOENIG: Yes, sir. Yes, sir.

CHAIRMAN RATTIGAN: Many states, including this one, don't give such requirements.

JUDGE KOENIG: I know. That's right.

CHAIRMAN RATTIGAN: And those consents just take place without --

JUDGE KOENIG: Maybe before a Notary Public.

CHAIRMAN RATTIGAN: Without your participation?

JUDGE KOENIG: That's right.

CHAIRMAN RATTIGAN: Assume an adoption proceeding pending in a state which does not require that the consent in California be given in court, but it has a statute similar to California's which requires that the consent be taken by the public agent, in our case the State Department of Social Welfare, charged by our law with doing so.

When that happens, does the State Department of Social Welfare bring that person into your court anyway, or do they proceed independently?

JUDGE KOENIG: They proceed independently.

CHAIRMAN RATTIGAN: All right. You are familiar with the fairly recent criminal prosecution in this County?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: On this subject?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: Some of the doctors and



attorneys involved in that prosecution are involved in some of these cases that you mentioned to us, are they not?

JUDGE KOENIG: Yes, sir.

CHAIRMAN RATTIGAN: In the one prosecution of which I am aware that was actually tried - if there were more, I am not aware of them - but in one of them Judge Walker instructed the jury that there is no prohibition in California against adoptive parents paying fees to the attorney for the natural mother, or to physicians and surgeons who have counseled, treated and cared for her, and who in connection therewith have aided and advised her in respect to the contemplated adoption of her child.

Do you agree with that as a statement of the law in California?

JUDGE KOENIG: He said there is no law?

CHAIRMAN RATTIGAN: There is no prohibition, he says.

JUDGE KOENIG: There isn't anything in the law which says that they cannot do it.

CHAIRMAN RATTIGAN: I take it, then, you agree that there is no prohibition?

JUDGE KOENIG: That's right.

CHAIRMAN RATTIGAN: And he charged the jury further: "Nor is it unlawful for adoptive parents to pay sums of money to or for the benefit of the natural mother to defray the expenses of her prenatal or postnatal confinement."

Do you agree that there is no prohibition in California against that?

JUDGE KOENIG: Well, only if the -- if some criminal statute would be involved. Otherwise, I would say there isn't any prohibition.

CHAIRMAN RATTIGAN: Do you think in either case

attorneys' fees, physicians' and surgeons' fees or expenses for the natural mother, do you think there should be such a prohibition?

JUDGE KOENIG: Yes, I think there should be a prohibition in the event that there are unreasonable fees or charges that are paid, or charges which have nothing to do with the birth of the child: Paying for tuitions to colleges, paying for automobiles, and for transportation to other jurisdictions, and similar areas.

Certainly, in certain independent adoptions where the parties feel that they would like to compensate the natural mother for some of her prenatal and postnatal expense, if it is done legitimately -- by that I mean by a proper placement of the child, certainly there would not be any objection to it.

CHAIRMAN RATTIGAN: I take it that you would permit or tolerate the payment of amounts of money in these matters where they are legitimately and directly related to attorney services, medical services, and living expenses, and if the amounts are within reason.

JUDGE KOENIG: That is exactly it. And I also say that as long as the Legislature has indicated its intent with reference to agency adoptions and permitted certain payments for medical care under its program, that I derive my authority from that particular intent of the Legislature.

CHAIRMAN RATTIGAN: Your authority to do what?

JUDGE KOENIG: My authority, I mean my statement to you with reference to such payment of such amounts.

CHAIRMAN RATTIGAN: One final question. In referring to several of the specific cases that you mentioned, you recited the fact that the adoptive parents did not meet the natural mother.

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: In a case where the amounts of money are clearly legitimate and clearly within reason and clearly within the ability of the adoptive parents to pay, but the adoptive parents do not meet the natural mother, is that alone, in your opinion, enough to make it an irregular placement according to your cataloguing of such?

JUDGE KOENIG: Well, the Legislature, on numerous occasions, has had before it several anonymity bills. The Legislature on each occasion, as I recall it, since 1949, has killed each and every one of those anonymity bills.

In view of the fact that the Legislature has indicated to me, at least, that it is not recognizing anonymity, I feel that the parties must meet, in order to make a proper placement.

CHAIRMAN RATTIGAN: What do you do in a case where everything is totally in order except that they have not met?

JUDGE KOENIG: I don't do anything. I grant the adoption. But that doesn't necessarily mean that I approve of the activity.

CHAIRMAN RATTIGAN: Do you consider it an irregular placement within the definition --

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: -- that you mentioned when you mentioned recording?

JUDGE KOENIG: Yes. That is why there are 700 of those cases that were submitted that I have reports on. Those are mostly "did not meet" cases.

CHAIRMAN RATTIGAN: Are you aware as a matter of legislative history that the specific legislative intent in killing anonymity bills was that the Legislature was opposed to anonymity?



JUDGE KOENIG: I don't know whether --

CHAIRMAN RATTIGAN: Or conversely that the Legislature didn't think anonymity bills were necessary?

JUDGE KOENIG: I don't know. I felt that as long as the Legislature did not adopt the anonymity bill, that therefore it was recognized that such parties should meet under the provisions of the law as it exists under 224(q).

CHAIRMAN RATTIGAN: Do you think that the Legislature should require that the parents meet?

JUDGE KOENIG: Well, I think it is inherent that they should meet, if it is an independent adoption. If they are not to meet, then there should be a relinquishment to an agency.

CHAIRMAN RATTIGAN: I have in mind that in many cases they don't meet, and if it is inherent that they should and they don't, do you think the Legislature should make it explicit rather than inherent that they must?

JUDGE KOENIG: Well, I think it would help the attorneys considerably. Some of the attorneys, even though they are engaged in this practice of brokerage - I call it brokerage, or irregular practice - see to it that the parties meet. And they do it in various ways. They have the parties see each other face to face without identity; the adoptive parent doesn't know whether that is the natural mother, the natural mother doesn't know whether that is the adoptive parent. But they meet.

CHAIRMAN RATTIGAN: Which is confrontation rather than non-anonymity?

JUDGE KOENIG: That's right.

CHAIRMAN RATTIGAN: Do you think that suffices?

JUDGE KOENIG: No.

CHAIRMAN RATTIGAN: Do you think names should be named?

JUDGE KOENIG: Well, if the natural mother has to sign the consent form, the names are supposed to be in the form and she has an opportunity of seeing those names.

CHAIRMAN RATTIGAN: Yes.

JUDGE KOENIG: I know that attorneys have told these natural mothers, and it has happened in my courtroom, and I made the attorneys tell their clients not to cover up the names.

CHAIRMAN RATTIGAN: On what?

JUDGE KOENIG: On the consent form.

CHAIRMAN RATTIGAN: The attorney usually isn't even present when a consent form is signed.

JUDGE KOENIG: No, I am talking about the form of consent which is signed in my court on an out-of-state consent.

CHAIRMAN RATTIGAN: All right. I don't mean to belabor this, but I am interested in knowing what you think should be required of the parties within this sphere of anonymity? Do you think a personal meeting is necessary? Do you think it should be?

JUDGE KOENIG: Well, I have always felt that if there is to be independent adoptions, there is only one way in which independent adoptions can be consummated, and that is by a meeting of the parties and by a placement by the natural parent.

CHAIRMAN RATTIGAN: Many, of course, are consummated in the absence of this event?

JUDGE KOENIG: No doubt about it.

CHAIRMAN RATTIGAN: Do you think the Legislature should require a meeting and a disclosure of identifying details?

JUDGE KOENIG: Yes, sir, if there is to be independent adoptions.

CHAIRMAN RATTIGAN: All right, thank you.

SENATOR CHRISTENSEN: Bearing out Senator Rattigan's thoughts, in the absence of this meeting and identification you have, yourself, classified these cases where there is no meeting as an irregular placement?

JUDGE KOENIG: That's right.

SENATOR CHRISTENSEN: Apart from what you have said, is there any other reason for regarding them as an irregular placement, or an improper placement?

JUDGE KOENIG: You mean in each of these cases? I couldn't make a general statement as to that, Senator. I could take each one of these and probably give you an answer on each case. Running through, I have two volumes of these forms that I have submitted to you.

SENATOR CHRISTENSEN: Is this true, then: That there are in those cases where the classification of irregular, or an irregular placement has been made, where the parents do not meet, there have been other circumstances --

JUDGE KOENIG: Oh, yes.

SENATOR CHRISTENSEN: -- which support your finding of irregularity?

JUDGE KOENIG: Well, when you say my finding --

SENATOR CHRISTENSEN: Or rather, your feeling or belief or conclusion that it did.

JUDGE KOENIG: Yes. Yes. Yes.

SENATOR CHRISTENSEN: Now, with reference to fees, exorbitant fees, now, we are speaking of, what exactly is the reason that you feel that an exorbitant fee in and of itself should be a reason for regarding the adoption placement as improper?

JUDGE KOENIG: No, I say that an exorbitant fee is an indication that there was some irregularity because an attorney would not charge that kind of a fee unless he felt he



were accomplishing a purpose; he was getting a child for somebody. He is not doing a legal service. If he were performing a legal service, he could justify a fee. But as long as he is not performing a legal service, I don't think that he should be entitled to a fee which has been indicated in any number of these cases.

SENATOR CHRISTENSEN: As I understand it, from the reports made, assuming an adequate investigation by the adoption worker, there is nothing disclosed other than the fact that exorbitant fees have been paid to doctors and lawyers, and is the conclusion to be drawn that the adoption itself, insofar as the best interests of the child are concerned, is in any way affected by the exaction of exorbitant fees by doctors or lawyers? What is wrong with the adoption? I mean insofar as the child is concerned.

JUDGE KOENIG: Well, I think it is the duty of the court to make an inquiry with reference to all practices which exist in the area in which the court sits.

SENATOR CHRISTENSEN: That's right.

JUDGE KOENIG: And the court has that responsibility to the community. And for the purpose of submitting it to such agencies that may prosecute the individuals, if necessary, or such bar associations that would want to discipline the individuals involved, or such medical societies. I think that is a responsibility of the court.

SENATOR CHRISTENSEN: My point was, apart from the fact that lawyers may engage in unethical practices by charging exorbitant fees, or doctors may engage in unethical practices by doing the same thing, is there anything arising out of the fact that an exorbitant fee in itself was charged that would affect the propriety or the validity or the legality of the adoption?

JUDGE KOENIG: Well, Senator, I have indicated that I have granted practically all of the cases, the adoptions, based upon the recommendation of the agency, based upon the information submitted to the court, even though irregularities have existed. And then, when the irregularities did exist, they were submitted to the State Department of Social Welfare as a follow-up.

SENATOR CHRISTENSEN: Is there any way that you can, or perhaps care to, relate the existence of an exorbitant fee to a doctor or lawyer or both with the best interests of the child to be adopted?

JUDGE KOENIG: All I can say is that you must take the area in which the professionals practice, and determine from that what is the reasonable fee charged for that particular service to others. I have indicated to you in one of these cases where the doctor testified in court that if it were anybody else but this natural mother, and there wasn't an adoption involved, he would charge 300 to \$350 instead of the \$500 which he charged. That is an indication that he is not charging a fee which is reasonable for the services which he is performing to the natural mother, and especially in view of the fact that that natural mother is in such financial circumstance that she has not the ability to take care of herself, and it makes it necessary for the adoptive parent to help her in paying certain sums to her during her prenatal and postnatal period.

SENATOR CHRISTENSEN: I see. We assume that there is an exorbitant fee, that it is perhaps an unethical practice to do so. My question is where do the best interests, how are the best interests of the child affected in any way by the exaction of an exorbitant fee?

JUDGE KOENIG: Well, I don't think that is the approach that the court has to it, whether it is to the best

interests of the child. Otherwise the court would have denied any number of cases, if that was the area in which the court were acting. But the court didn't act in that area with reference to the child. The court acted in the best interests of the child determined by the report of the State Department of Social Welfare and the testimony of the adoptive parents.

I know this to be a fact: That these people are very much interested in obtaining a child. They have been probably exploring any number of areas in which to obtain a child. And they will pay any amount of money in order to get a child, even though they have not exhausted the agencies which maybe available to them in order to obtain such child. But there may be other things. It may be that the agencies have certain restrictions with reference to age of the adoptive parents, and it is impossible for them to obtain a child. So they go out and try to get their child from other areas. And these professionals are the means for them to obtain such child for them, without any investigation of these parties at all. They just take -- I have transcripts in my files in which the attorneys have stated that they maintained lists of adoptive parents, and also communicated with the parents as soon as they hear of a child being available.

SENATOR CHRISTENSEN: That is exactly what we are talking about.

JUDGE KOENIG: Yes.

SENATOR CHRISTENSEN: In other words, do you feel that the best interests of the child are adversely affected by reason of the fact that they may obtain a child this way or they might have to wait a considerable period of time to obtain a child through a non-independent or relinquishment proceedings?

JUDGE KOENIG: Well, naturally, the court is very much interested in seeing that child obtain parents. The



sooner the child obtains parents, the better. That doesn't necessarily mean that these are the best parents. They may be good parents, but they might not be the best parents available for that child because when an attorney or a doctor maintains a list of prospective adoptive parents, and also has a list of unmarried mothers, or even married mothers that may give birth to children, and uses that as a means of submitting it to attorneys, or the attorneys submitting it to the doctor in order to get these children for these parents, then I don't think it is for the best interests of the child in the manner in which we look at it, as from the social angle.

SENATOR CHRISTENSEN: That is exactly what I have in mind. What is your reason for believing it is not for the best interests of the child?

JUDGE KOENIG: Because I feel, I personally feel that if the children were adopted through an agency process, that the agency would do an investigation of the adoptive parents and of the natural mother and would be in a better position of placing that child in the home in which that child should be placed.

After all, it isn't the need of the natural parent - or the adoptive parent that we are satisfying. It is what is for the best interests of that child.

SENATOR CHRISTENSEN: That's right.

JUDGE KOENIG: Regardless of what the adoptive parents may want or may be, but I don't think -- I don't think that in the cases which come before our court, and these placements, that that is always the case. It works out, yes. But we don't know. I mean, that is a factor in which it is hard for me or anybody else, I think, to make a determination, although some people have tried to indicate how one placement is better over another type of placement.

SENATOR CHRISTENSEN: In any case of an independent adoption, probably the investigation made by the attorney or the doctor where recourse is not had to a relinquishment will be inadequate or suffer unfavorably as compared to a relinquishment adoption or through a child placement agency?

JUDGE KOENIG: Yes, sir.

SENATOR CHRISTENSEN: Is it your position, then, that independent adoptions as such should be abolished?

JUDGE KOENIG: No, sir.

SENATOR CHRISTENSEN: Thank you.

SENATOR O'SULLIVAN: I have a couple.

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: We have here basically two different philosophies which come into play, the independent and the right of the parent --

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: -- to place the child, which is probably so, and then on the other hand we have the other extreme that would be the complete right of the state to place the child in accordance with policies adopted by the state through its Legislature. And we have here a process that is just made up of both. Selecting, the parent can select, the prospective parent can select the method by which the child can be placed.

It is left, actually, the placement of that child under our present law is at the discretion of the parent, isn't it?

JUDGE KOENIG: Yes, sir. It should be.

SENATOR O'SULLIVAN: They can adopt either the agency method or the independent method?

JUDGE KOENIG: That's right. Some states, Wisconsin has eliminated that.

SENATOR O'SULLIVAN: Would you eliminate that?

JUDGE KOENIG: No.

SENATOR O'SULLIVAN: Would you restrict the choice of the parent in the first instance in any way in selecting one or the other? Can you think of anything --

JUDGE KOENIG: Restricting the parent?

SENATOR O'SULLIVAN: Yes, the woman that is going to have the child, would you place any further restriction on her matter of choice?

JUDGE KOENIG: I don't see how you can do that. I think she has a right to do whatever she wants to with her own child.

SENATOR O'SULLIVAN: And select either one?

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: Now in regard to the second method, the first method is pretty well surrounded with safeguards at the present time, isn't it? That is the agency method?

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: That is pretty well, that method is, in your experience, pretty satisfactory, do you think?

JUDGE KOENIG: I think it is satisfactory for several reasons. I think the state has recognized it by adopting the legislation which permitted the public agencies. I can go back to 1946 when we only had two agencies in the state. They were both private. Now we have 17 public and 13 private agencies.

SENATOR O'SULLIVAN: There is one question I would like to ask you because you evidently have had a longer background in this than anybody I have ever talked to about it.

Why is it that at this late date, after so many years of experience with the two alternatives, that the prospective parents are evidently in roughly 50 percent of the cases, at least,



not selecting the one with all the safeguards in it? Do you have a reason on that?

JUDGE KOENIG: Well, the only thing I can say, Senator, is that there may be a lack of information being submitted to the parents.

Another reason may be that, after all, there isn't any person that would pay for a lot of the things that they get through the independent placement by these extra fringe benefits, let's say, with reference to transportation, with reference to tuition, with reference to the doctor of selection that she may make.

SENATOR O'SULLIVAN: Now, at this point isn't there something else? In the second method of independent adoption doesn't the parent get a little more time in which to decide whether she really wants to relinquish that baby or not?

JUDGE KOENIG: Oh, yes. Yes.

SENATOR O'SULLIVAN: But under the first method she doesn't get as long to decide after the baby is born, does she?

JUDGE KOENIG: It is done in most instances before birth.

SENATOR O'SULLIVAN: Before birth. So that she is cut off.

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: So that there are 50 percent of these mothers who may be having a child illegitimately, and they are young - it is usually young women, isn't it?

JUDGE KOENIG: Some of these cases the mother was only 14 years old.

SENATOR O'SULLIVAN: Yes. And she hesitates because they are not sure how much they are going to want to really give that baby up?

JUDGE KOENIG: That's right.

SENATOR O'SULLIVAN: So the fact that they have to sign the relinquishment with the Department really before is leading some of them to place their children independently, isn't it? Isn't that one of the big factors? They can't make up their minds. They are in this stage, like --

JUDGE KOENIG: Well, usually the consents are signed immediately after the petitions are filed in the independent adoptions. They take them right down to the agency to sign their consents. As soon as the baby is born -- the petition is filed, they go down there to sign their consents. The attorney takes them right down there.

SENATOR O'SULLIVAN: I am asking you another question. Don't you think that this is one of the main problems that --

JUDGE KOENIG: No.

SENATOR O'SULLIVAN: You don't think so?

JUDGE KOENIG: No.

SENATOR O'SULLIVAN: I have handled very few adoptions, but I think the state of mind in this girl who is going to have the baby is one where she is in a great deal of conflict. It seems to me that they hesitate about giving up completely.

JUDGE KOENIG: Well, yes, I think that is indicated by --

SENATOR O'SULLIVAN: Would you make any changes in the first method of adoption? Perhaps we could bring in 10 or 20 percent more of these who are letting their children go independently? Have you any suggested change in the first method whereby we could get a little flexibility?

JUDGE KOENIG: No. And I think that you have several witnesses that are scheduled to appear before your

Committee that may have some answers with reference to that.

SENATOR O'SULLIVAN: All right, thank you. I noticed you had a great deal of background in it and I am interested.

CHAIRMAN RATTIGAN: Any further questions from the Committee? Thank you, Judge Koenig.

Now, you will provide the Committee with memoranda concerning the specific cases you mentioned, including those you didn't get to?

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: And you will furnish us with a letter with some statistics?

JUDGE KOENIG: Yes.

CHAIRMAN RATTIGAN: Regarding number of attorneys and doctors versus number of cases. We were interested in exploring the degree to which these irregular activities were being carried out, and whether they were being duplicated by the same persons.

I would like to know how widespread this is in the legal profession.

JUDGE KOENIG: You understand that 60 percent of the adoption cases I heard were in the Central District? What happens in the other eight districts in Los Angeles County I do not have any records of.

CHAIRMAN RATTIGAN: Just with reference to your own district.

JUDGE KOENIG: I can only tell you what happens with reference to my district, and I can also tell you that some of the lawyers have seen fit to file these cases in the outlying districts because of some of the interrogations which have taken place in the Central District.

CHAIRMAN RATTIGAN: Now you have opened up another



question, if I might ask. It goes into your court organization a little bit. But are you the only one in your position who asks these questions in Los Angeles County?

JUDGE KOENIG: In the Central District.

CHAIRMAN RATTIGAN: Yes.

JUDGE KOENIG: Except when an affidavit is filed.

CHAIRMAN RATTIGAN: Well, in adoption proceedings filed in other districts, this disclosure --

JUDGE KOENIG: We had -- no, the circumstances of placements are in the reports. What the Judges do in the branch courts I don't know.

CHAIRMAN RATTIGAN: All right. That answers my question, thank you.

JUDGE KOENIG: Thank you for the opportunity of appearing.

CHAIRMAN RATTIGAN: Dr. tenBroek.

While Dr. tenBroek is approaching the microphone, I might note that we went considerably beyond the allotted time in our discussions with Judge Koenig obviously because of his position and experience. We hope from here on out we can proceed more expeditiously witness by witness, or we will be here indefinitely.

Would you identify yourself for the record, sir?

DR. JACOBUS TENBROEK: My name is Jacobus tenBroek. I am Chairman of the State Social Welfare Board. I have been Chairman for two years and a member of the Board since 1950.

The Board, as you know, is a part-time Board. I earn my living as a professor at the University of California. I have been interested in adoptions since I have been on the Board, and some years ago, in 1954, or so, I published a monograph in the Hastings Law Journal which has come to the attention of some people and had some favor with the courts.

I have with me a prepared statement which is being given you. And I also have with me Mrs. Katherine Kuplan, who will sit with me, and who has prepared a number of charts which I will ask her to display and talk about at various parts of my testimony.

One of these charts, indeed, or several of them, will answer in detail a number of the questions asked by Senator Christensen dealing with the organized character of adoption placement activity in the Los Angeles area.

Now, Judge Koenig has given you a considerable number of specific cases out of his own court which illustrate a number of the points that I want to make, and I should like, therefore, to begin by trying to pull this whole thing together a little bit. After that, if you desire, I will call your attention to additional cases of the sort that Judge Koenig mentioned, and also instances of other practices which seem to me either illegal or undesirable.

Now, if I may call your attention to my statement, I will read a portion of it and then, in other places, simply call your attention to various pieces of the evidence.

My testimony will bear directly upon one of the questions asked by the Committee, and only one. That is your number 8: "Do you have any specific knowledge of actual cases of illegal or improper placement of children for adoption?"

What I have to say will bear indirectly, of course, upon a number of other questions asked by the Committee.

What I will do in my statement is this: I will summarize the results of the investigations conducted by the State Department of Social Welfare and by the Attorney General; describe the events leading up to the so-called Los Angeles indictments and state what I take to be the upshot of the legal proceedings.

The object is not to retry the cases here which we lost in court, but it is simply to assess the extent of the independent adoption abuses and the availability of legislation, present and potential, to correct them.

During the past decade much of our discussion in legal opinions, legislative hearings, and law journal writing in the field has been preoccupied with such questions as these: Suppose the kindly old lady next door, out of her neighborly impulses and entirely without compensation, knows of a prospective adoptive couple and advises and assists the natural mother in making a placement with them. Is this in violation of Civil Code Section 224q and/or of Welfare and Institutions Code Section 1620?

What about the doctor or lawyer who, having a natural mother as a patient or client, in addition to taking care of her strictly medical or legal problems, assists her in finding an adoptive couple; or, having a prospective adoptive couple as patients or clients, assists them in finding a baby? Is this a violation of the two code sections?

Whether proffered by neighbor, friend, physician or attorney, with or without expectation of monetary reward, where does permissible assistance to natural mothers and adoptive parents end, and the forbidden activity begin?

These questions deal with legal refinements. They are aimed at probing the precise location of the dividing line by placing various close fact situations in the context of the statutory language. They are certainly proper subjects of legislative, professional and academic inquiry.

All these discussions have presupposed, however, that when the real thing comes along there is ample law to deal with it; that when we are no longer dealing with close cases of kindly neighbors, or family doctors and lawyers occasionally



helping out in an emergency, then the State Department of Social Welfare could and would move, the district attorneys would prosecute, judges would instruct on law, juries would return verdicts and the defendants would suffer the penalties of the criminal law.

We now know, after our experience in the Los Angeles indictments, that this supposition was in error. As interpreted, the law is not adequate to cope with various offenders.

Now, may I first say a word or two about the investigation and the investigators. The State Department of Social Welfare has long been receiving intimations of substantial violations of the placement statutes. These intimations have come from routine data collected on independent adoptions showing, among other things, the number of adoptions per year handled by individual lawyers and the doctors with whom they work in which there were irregularities.

In an article published in the Los Angeles Mirror-News on September 3, 1959, Judge Clark, to whom Judge Koenig referred, and who sat in the adoption court here, leveled public criticism at adoption practices and adoption fees. Judge Clark said that certain Beverly Hills doctors and lawyers were collecting exorbitant fees for finding homes for babies of unwed mothers.

He further stated that a young lawyer had come to him informing him that a Beverly Hills law firm was willing to pay him \$1,000 a month just to hold the hands of unmarried mothers and find homes for their babies.

About the same time the Los Angeles Planning Council wrote a letter to the State Social Welfare Department urging that something be done to prevent suspected current widespread violations of statutes.

The total list of prosecutions in the past, and I thought it would be well for the Committee to have that and I prepared it, but in view of the shortness of time in getting ready for these hearings, the secretaries were unable to get it typed up and consequently it is not in the appendix where I say it will be, but I will submit it to the Committee later if they wish to have it; the same goes for past record of referrals to the State Bar and State Medical Association with respect to suspected violations.

Through these various sources it became apparent in the last two or three years that a great volume of independent adoptions was being handled in the Los Angeles area by a small number of attorneys and doctors. A thorough-going investigation seemed to be called for.

To do this work, the State Department of Social Welfare secured the services of Mr. Ernest Mitler. He possessed unusual qualifications and experience. He had been Assistant District Attorney of New York County, New York, for eleven years. During that period he had investigated and participated in the handling of black market cases in New York County. He worked with the Canadian Police investigating the baby-selling racket in Canada. Thereafter, for three years he served as Assistant Counsel to the United States Senate Committee on Juvenile Delinquency under Senator Kefauver, where he did field investigations, interviewing of witnesses, and conducted three major hearings on interstate trafficking in children.

Mitler began work in California on January 1, 1960. He remained on the job for a full year. He employed up to five investigators, not all full time and not all for the full year. Mitler and his agents, posing as prospective adoptive parents, or as natural mothers, answered wage-home ads, and followed leads to doctors and lawyers. They interviewed natural

mothers and adoptive parents who had placed or secured children through this process. They talked to hospital staffs. They collected information from every possible source.

When Mitler's investigations had produced the main body of data, he prepared a series of reports which were submitted to the State Department of Social Welfare and to the State Social Welfare Board. These reports were intensively reviewed by the staff and by the Board. Protracted consideration was given to the alternative courses open to the State. A special committee was appointed to advise the Department and the Board.

That committee consisted of some of the most distinguished, able, and informed persons in the State. And you have that list of committee men before you and I am sure you will agree that these are people who are well acquainted with this field and have standing in the community to give sober advice on a topic of this kind.

The advisory committee, the Board, and the Director of the State Department of Social Welfare met with Attorney General Mosk. Attorney General Mosk's staff, in the meantime, had also carried out an investigation similar to that conducted by Mitler. The report of his investigators and that of Mitler agreed in every substantial particular.

A committee of the Board, the Director of the State Department of Social Welfare, the whole special advisory committee on adoption abuses, and the Attorney General all met with District Attorney McKesson of Los Angeles County and some of his staff. After a thorough review of the available evidence, District Attorney McKesson decided to present the matter to the Grand Jury and to ask for indictments.

On December 13, 1960, two indictments were returned. They named four lawyers and one doctor. In my



testimony, I will follow the practice of naming the lawyers and doctors who were indicted either in California or in New York, but with respect to other persons not indicted I shall not call them by name but refer to them in other ways.

The indicted persons in California were attorneys Anthony Carsola, Herbert Gelfand, Ralph Benson, Jorden Wank, and the doctor was Aaron Lax.

The indictment charged the defendants with conspiracy to violate Penal Code Section 181, Civil Code 224q, and Welfare and Institutions Code Section 1620, in that they agreed together and with other persons to sell and attempt to sell human beings to other persons in violation of Section 181, to place children for adoption not then and there being the parent of said children and not then and there having a valid and unrevoked license and permit to place children for adoption issued by the State Department of Social Welfare, in violation of Section 224q of the Civil Code, and to engage in the finding of homes for children under 16 years of age and place children under 16 years of age in homes for temporary and permanent care and for adoption without then and there having a written license and permit therefor from the State Department of Social Welfare, in violation of Section 1620.

In a second count, Benson was charged with soliciting two persons to commit and join in the commission of perjury in violation of Penal Code Section 653f, the solicitation being in connection with a possible sole custody proceeding preparatory to an adoption.

Meanwhile, on June 20 and June 22, 1960, a Grand Jury in Queens, New York returned a series of indictments dealing with matters arising in part in California and in part in New York.

In the various New York indictments, there were

seven indictments; four of them Californians, Drs. Imerman and Lax and Attorneys Gelfand and Benson. These four were charged with receiving compensation for the placing of a child, with the unauthorized placing or boarding out of a child, with sending a child into New York State for adoption purposes without first obtaining a license, and with the crime of conspiring to send a child into New York State.

In addition, Imerman and Lax were indicted for requesting, accepting or receiving compensation for the placing out of a child, being unauthorized persons, and Lax and one Isidore Friedman, an unindicted co-conspirator in California, were also charged with inducing first degree perjury and with conspiracy to do so. And Friedman was charged with procuring and offering a false affidavit.

Now, I have set forth in the appendix the Penal Code provisions of New York State. They vary somewhat from those in California, but they are there in case you wish to look at them in connection with these indictments.

Lax attempted to frustrate extradition by appeal to the California courts. He failed in that, and thereafter pleaded guilty to sending a child into New York State for adoption purposes without a license and received a suspended sentence. The charge of inducing first degree perjury was dismissed. On the other counts he was discharged on his own recognizance.

Benton's extradition papers were found faulty at first, but New York hasn't gone any further than the initial issuing of a bench warrant in his case. The understanding is, I think, that they will not proceed further until Benson's cases in the California courts have been brought to an end. The New York charges against him remain open.

Imerman pleaded guilty to the charge of placing

or boarding out a child and received a suspended sentence. On the other counts he was discharged on his own recognizance.

Gelfand was discharged on his own recognizance on the charges against him.

Now, that concludes the preliminary statement of the proceedings and the investigation. At this point I would like to state for you the conclusions which seem to me to emerge from the evidence collected in the course of the investigation and at the Grand Jury proceedings and at the trial in Los Angeles. And thereafter, to the extent you wish, I will take up evidence with respect to each of these points.

CHAIRMAN RATTIGAN: Dr. tenBroek, in light of your remarks about these people by name and disposition of charges against them, you mentioned that the charges against Benson remain open.

DR. TENBROEK: Yes.

CHAIRMAN RATTIGAN: Wasn't he tried this past summer?

DR. TENBROEK: In New York?

CHAIRMAN RATTIGAN: No. Here.

DR. TENBROEK: Oh, no. He was tried here, but the charges against him in New York remain open.

CHAIRMAN RATTIGAN: Oh, what is the present state of the record in California?

DR. TENBROEK: The present state of the record in California is that the jury did not return a verdict against him on Count I, that is the violation of the three statutes. As we understand it, seven voted yes and five voted no, so the jury was in disagreement.

On Count II he is currently involved in proceedings before the Supreme Court of the State. The District Court of Appeals, having intervened to bring an end to the trial in the



Superior Court on that count, and that is on appeal to the Supreme Court now.

CHAIRMAN RATTIGAN: Who is appealing, the District Attorney?

DR. TENBROEK: Yes.

CHAIRMAN RATTIGAN: All right, thank you. I am sorry I interrupted you.

DR. TENBROEK: That's all right. Now, let's see. What page are the conclusions on?

MRS. KUPLAN: On Page 5.

DR. TENBROEK: Yes. Now, if you will direct your attention to Page 5 of my statement, you will see the conclusions set out, which I will state. These seem to me all justified by a conservative assessment of the evidence turned up or confirmed by the investigation conducted by the State Department of Social Welfare and by the Attorney General.

Number one: A small group of lawyers and doctors in the Los Angeles area handles a large number of independent adoptions each year. This portion of their business cannot be regarded as incidental or occasional. It is specifically sought and assiduously cultivated. Because of the number of children involved, the amount of money, and the methods of doing business, the independent adoptions activities of this group are properly described as a large scale commercial enterprise.

Number two: These lawyers and doctors in the Los Angeles area work closely together. Each strive for the maximum amount of business for himself. In that sense, they compete with each other. At the same time, they make numerous referrals to each other, necessarily so as between doctors and lawyers and vice versa. They have mutually advantageous contacts and relationships among themselves in handling adoptions.

Number three: In one sense, some of these attorneys and others have created a formal organization. On July 26, 1960, they filed a certificate of incorporation with the Secretary of State of California. The name of the corporation is The Independent Adoption Association. The corporation has secured exemption from the State Franchise Tax on the ground that it is a social welfare organization.

Number four: One source of supply of babies for this group is the so-called wage home. In these homes unwed, pregnant girls, attracted by newspaper advertisements, are economically exploited and sometimes otherwise mistreated. The wage-home operator pays the girl a small weekly wage, usually \$10, for doing housework. The girls are referred by the operator to the lawyers in the group regarding the adoption of their babies. The operator receives money from the lawyers generally in amounts at least double the wage paid the girl.

Number five: Systematic contact with doctors and hospitals is another source of babies for lawyers in the group.

Number six: These lawyers often place children in what might be called "foster homes" for temporary care, after separation from the natural mother and while waiting for the adoptive parents to pick the child up.

Number seven: The fees charged by the lawyers and doctors often are only in small part for legal and medical services rendered. Sometimes not at all. The rest of the fee is for arranging the placement. Sometimes a portion of the fee is paid under the table.

Number eight: The lawyers are not above altering the background of the natural parents so as to suit more nearly the desires of the adoptive parents.

Number nine: Knowing toleration of perjury or

deliberate solicitation of it, and submission of false affidavits and reports, have been resorted to by lawyers and doctors of this group in order to appear to satisfy the legal requirements of California and other states.

Number ten: Various coercive devices and practices are used to influence the natural mother not to change her mind about an adoption. These include promissory notes, covering expense money supplied, which are made due and payable upon failure of the mother to go through with the adoption, or are cancelled upon completion of the adoption; agreements or declarations of intention to go through with an adoption in consideration for payment of expenses; and the withholding of some part of agreed upon amounts of money to be paid to the natural mother for bills accrued or anticipated until after the consent is signed.

Number eleven: The group of Los Angeles lawyers and doctors are properly characterized as baby brokers; that is, intermediaries, middle men, arrangers. They have no license to carry on this function.

Now, with respect to the first two points, that is, the character of the group activities, the reports of investigator Pat Sax, posing as an adoptive parent, of conversations with Attorney Anthony Carsola will give a good impression of the interrelationships of the members of the Los Angeles group of doctors and lawyers and the over-all character of their adoption activities.

Now, I set those two reports out following Page 8, but I have, since they are rather lengthy, formed a summary of them, which I will read to you.

The highlights of this rather lengthy testimony may be summarized as these: The exorbitant cost of an adoption to the adoptive couple, namely, in this case, \$3,000;



The practice of having the adoptive couple meet the medical and maintenance expenses of the natural mother. And Judge Koenig has testified on both of these points.

The frank avowal of the attorney that he makes all the arrangements for placing the baby;

The relationships among the doctors and lawyers in terms of referrals and other contacts;

The central role played by Dr. Lax as the focal point of referrals by doctors and lawyers;

The black market and grey market implications of the independent adoption practice causing many lawyers to remain out of the field and refer their cases to Carsola;

The great number of children involved: Dr. Lax examined, according to Carsola, 50 a month directly or indirectly, and I don't know how a doctor does that. And Carsola sent him a girl a week.

The techniques used to limit contacts between adoptive couple and the natural mother and of controlling the relationships between them;

The dual and contradictory roles of the lawyer in representing both adoptive and natural parents;

The interstate and transcontinental character of adoption activities centering in Beverly Hills: Carsola had adoptions in progress at that time in Massachusetts, Virginia, Pennsylvania, and two just completed in Idaho;

The evasive device of completing adoptions in a state other than that of the adoptive couple when legal requirements in that state are less restrictive than in the state of the adoptive couple;

The special position of Jewish babies in transcontinental placements. They bring the premium prices. The alleged existence of the tremendous lobby of lawyers and

doctors in Sacramento to prevent the outlawing of direct placements;

And, finally, the disclosure of the tactics of attack on the public adoption agencies: "They are afraid of doctors and lawyers because we can make so much trouble for them. We say they are empire builders, we say they are trying to take the business away from us. We say that they are trying to destroy the doctor-patient relationship by putting the girls in County Hospital and taking their patients away. And we accuse them of so many things that most of the time are true that they just leave us alone. They are just afraid. I mean, it's just fraught with political dynamite."

Now, you find set out, as I said, at the end of Page 8 the whole testimony of these interviews. I think you will find what I said to be an accurate summary.

The reports of the interviews are set out there, and in just a minute I will ask for the presentations of some charts showing the interrelationships of the group and the number of adoptions, and so on.

CHAIRMAN RATTIGAN: You will excuse me, Dr. tenBroek.

DR. TENBROEK: Yes.

CHAIRMAN RATTIGAN: It is almost 12:15. It seems before you get to the charts would be an opportune time to break.

DR. TENBROEK: All right, sir.

CHAIRMAN RATTIGAN: Would you like to go ahead for a couple of minutes as you indicated?

DR. TENBROEK: Well, this would be a very good place, I think, because it will take some time to present the charts, and so on.

CHAIRMAN RATTIGAN: All right, the Subcommittee will stand recessed until the hour of 1:45.

(Afternoon Session, 1:45 P.M.)

CHAIRMAN RATTIGAN: The Subcommittee will be in order. Dr. tenBroek, you had just concluded your reference to the investigators' interviews with these people of whom you were speaking, and you were about to move to the charts.

DR. TENBROEK: Right.

CHAIRMAN RATTIGAN: Before you commence, may I remark to all present that we have five more witnesses from whom we hope to hear today following Dr. tenBroek, and in the nature of things, we have fallen behind. I don't want to curtail the presentation to be made by anyone, but we are now pressed for time and we have in mind, Dr. tenBroek, to take about another 20 minutes or so and then submit your full statement in writing for consideration by the Committee.

DR. TENBROEK: All right, sir.

CHAIRMAN RATTIGAN: Or those portions which time prevents you from getting to orally. Would you now proceed?

DR. TENBROEK: Yes, thank you, sir. I will be glad to cooperate with the Committee in any way possible in the time here and later on by submitting additional stuff, if you wish.

Now, Mrs. Kuplan is here and she has prepared a series of charts which I think will drive this point home as to the size of the group we are talking about, the number of cases involved, and the nature of the operations.

Now, Mrs. Kuplan has been with the Bureau of Adoptions in the State Department of Social Welfare since 1948. She has been the chief of the Bureau of Adoptions since 1956. She worked with this investigation very closely and is thoroughly acquainted with all of the background that I have been talking about. She has worked out these charts, and I think they will serve to answer the type of question that was asked before lunch of Judge Koenig about how large this group was,



how many times lawyers and doctors worked together, how much collaboration of that sort there is.

So, if I may, I will take a portion of my 20 minutes with Mrs. Kuplan's charts.

MRS. KUPLAN: Thank you. This first chart, gentlemen, shows the activity in relation to placements, and to professional activities, and to others participating in placements. Can you all see this?

We spoke of the activity going back and forth between doctors and attorneys. In this particular chart here, Dr. 1 had more than one-third, he showed up in more than one-third of the cases, in the other cases handled by attorneys. This represents an unduplicated count of 335 cases over a period of about three and a half years, roughly.

As far as the activity of individuals goes, this represented 158 adoption cases there. This one represents 91 adoptions. Attorney 7 represents 32, Attorney 5, 29, Dr. 2, 27, Attorney 8, 24; this attorney in New York, 6; 31 here. I don't have a count on Nevada. This is about 10.

I think it would show you these lines drawn between are to represent the referrals back and forth and across. Some of them also represent where two or three of these individuals are shown in any one case. This is not necessarily an exhaustive count.

CHAIRMAN RATTIGAN: May I interrupt to inquire, what geographical area does this represent?

MRS. KUPLAN: This represents Los Angeles.

CHAIRMAN RATTIGAN: All right.

MRS. KUPLAN: We have a similar kind of, not a chart, but I have a report here from, for instance, Oakland, where one attorney shows in 35 cases with a particular doctor in 24 of them. Another has 19, with two different doctors on

15 of them. So that there is a similar type, but not as numerous in other parts of the state.

CHAIRMAN RATTIGAN: In Oakland?

MRS. KUPLAN: Oakland and San Francisco. I happen to have these examples from there.

CHAIRMAN RATTIGAN: Do you have any such figures on any other area in California?

MRS. KUPLAN: They are being compiled. We do have them in the Department. I didn't bring those with me. But we have some, not to the extent; in a smaller extent in Sacramento and some of these represent also, as I think I could show you by the next charts, out of the County activity also, out of Los Angeles County.

CHAIRMAN RATTIGAN: All right, go ahead.

MRS. KUPLAN: If you would like to look at them.

This chart gives one attorney's activities from 1953 on as an attorney of record in 104 cases in Los Angeles. That is listed by actual case numbers, where he appeared, going from two, in 1953, to 28 in 1959, and then 19 for the partial in 1960.

The same attorney appeared as attorney of record in Fresno County, Riverside, Sacramento, Orange, Santa Clara.

I have a similar report for a period of time in San Francisco where one attorney appeared as attorney of record in 24 different counties.

This same attorney appeared as attorney representing a natural mother, and this Attorney 1, if you recall, on the chart 1 here, in Los Angeles County, and as well in out-of-state situations appearing, not for the mother necessarily, but involved in placements in New Jersey, New York, Georgia.

Doctor 1, who appeared on the chart here, if you recall, at the center of a referral and exchange back and forth --

CHAIRMAN RATTIGAN: May I interrupt?

MRS. KUPLAN: Yes, sir.

CHAIRMAN RATTIGAN: With reference to the chart now showing, Chart B, "Attorney for mother", it is labeled, what does it mean on the right when it says "Attorney for petitioner"?

MRS. KUPLAN: The attorney for petition is a coded number as we had them on this other chart. If you will notice here, sir, there is an attorney number 8. That is that same number, Attorney 8.

CHAIRMAN RATTIGAN: What does 27 mean, the third item down?

MRS. KUPLAN: That is a coded number for an attorney instead of a name.

CHAIRMAN RATTIGAN: All right. Who does not appear on the first chart?

MRS. KUPLAN: No, it doesn't.

CHAIRMAN RATTIGAN: All right.

MRS. KUPLAN: Attorney 3 is here and Attorney 5, but not Attorney 27; doesn't happen to be.

Doctor 1, in the center of this chart, the first chart I showed you, worked with Attorney 1 in 83 cases. In addition to that, he appeared in cases with these numbers for each of these years in summary. A summary of these three, these several charts, is in the report numerically, not an actual reproduction. So that he has close to a similar total of cases.

In addition, he appeared in this many out-of-state situations in which they -- these are coded by names, the names have been coded to numbers, picking up on the chart from Attorney 1 where it was A, B, C, D, we just went on and numbered the names. These represent the other attorneys in



California other than 1. Well, 1 is also here. And New York attorneys. They do not show Illinois attorneys.

In reference to these, we did a rundown on the number of such combinations, and for, roughly, these attorneys here plus a few more in the San Francisco-Oakland area, it showed a total of 610 cases in about the three and a half year period of time in which there was activity in relation to placement and participating in placement, as well as the examples of professional activities.

At times there were two or three attorneys or doctors in them, and Dr. tenBroek later on will speak more specifically to that type of activity.

Do you want to go on, Dr. tenBroek?

DR. TENBROEK: Now, gentlemen, if you will look at Page 10 of my statement, you will find a heading number 4, "Wage Homes". You have a group here of lawyers and doctors. These people get all kinds of babies and all kinds of adoptive couples, or, that is, they have many they are able to find, recruit many babies and many adoptive couples.

One of the techniques of recruitment is this wage home, and we have made a little study of that.

The Department has been able to identify 26 of them in the Los Angeles area. They operate under a very simple device: They put ads in the papers seeking unwed, pregnant girls who wish to work. They come to work and get paid a pittance for their work and the wage operator, the operator of the home, refers them to the lawyers in the group and/or the doctors and receives from the lawyers a sum of money which is always higher than the wage.

So the wage operator comes out with work contributed free of charge and some cash on the side, and they find this a very profitable enterprise. The result is that they

not only take care of the girls who answer the ad when they have work to do, but they continue the ads after the places are filled and then the stream of referrals goes direct from the operator to the attorney without ever having any wage-home experience with the person who did the advertising.

The attorney or the doctor then places the girl in another wage home. So this is a whole string operation.

Now, things are somewhat out of order in this manuscript, but if you will turn to Page 24 and then turn back one page, you will see another chart that illustrates this wage-home business, and Mrs. Kuplan will give you a view of the chart doing that.

MRS. KUPLAN: These ads have appeared in various papers throughout the Los Angeles area in particular. They include, at times, ads from other sections, but primarily they are from Los Angeles.

I see, I picked up the Times this morning and it had one of the ads that runs very frequently. For instance, it ran January, 1960, March 31, April 6, November 3, December 1 in 1960. I picked it up this morning and found another ad.

These three ads are shown here, gentlemen, and represent ads that have appeared off and on in the press in Los Angeles, the Examiner and Times. The boxes below -- this represents Attorney 3, and the 15 mothers shown below this are situations identified by the wage-home operator before the Grand Jury giving names and numbers of individuals who had been in her home, and the statement that these had been referred to Attorney 3, who handled the adoptions.

The same is true in relation to information given by one of the mothers and investigators before the Grand Jury in relation to Attorney No. 7. We have other ads that ties into other attorneys and to doctors. These were given as

examples of the type of activity that we find.

DR. TENBROEK: Now, gentlemen, if you will turn to Page 15 of my statement, you will find another heading, "Systematic contact with doctors and hospitals." In addition to this use of wage homes as a method of recruiting girls and babies, Attorney Benson employed a secretary, a portion of whose work was systematically calling lists of doctors which Benson supplied, and these doctors were asked whether they had (a) any babies, any girls who expected, expecting girls or any babies to place for adoption; and secondly, whether they had any adoptive couples. And the girl also phoned adoptive couples who had secured a child earlier through this office and asked whether they wanted another one.

So this is a very systematic procedure of recruiting girls and babies and adoptive couples.

Following the statement there about the testimony of Benson's secretary before the Grand Jury, is a statement by Richard Kay, on Page 15, administrator of Burbank Osteopathic Hospital, showing the relationship of Benson to that hospital, the use he made of it in terms of getting babies.

Now, on Page 18 you will find a discussion of the use of foster homes. When you got the girl and the baby and made the arrangement with the lawyers and the doctors, and the girl delivers, then the problem exists as to how you make the physical transfer to the adoptive parents. And a device commonly used by this group is the foster home. That is, the child is taken from the hospital to a licensed foster home and placed there and kept there for varying periods of time until the adoptive parents could pick them up.

In one of the cases Judge Koenig referred to this morning, a child was returned to the lawyer because the parents thought it was too small, or too large, or something, and the



child was then replaced in the foster home and from that point another adoptive couple was selected by the attorney and the child was placed with them without any further consultation with the natural mother at all.

So these foster homes are an essential step in the physical process of getting the child from the natural mother to the adoptive couple, and an essential chain in this whole long procedure.

Now, on Page 20 I deal at length with legal and medical fees. You had a good deal of evidence from Judge Koenig on that this morning. Much more is set out here.

There are striking instances in which the doctors and the lawyers simply had no possible justification in terms of professional service rendered for the fees charged.

Look at this example, for instance: Dr. Harold Imerman had placed a child with Mr. and Mrs. J. P., of Pacoima, California. The P's had paid for the natural mother's doctor and medical bills and had agreed to pay Imerman a fee of \$500, thinking that he would be rendering the medical services on the case. They declined to pay Imerman this fee when they discovered that a Dr. S had delivered the natural mother as well as giving her prenatal medical services. In an attempt to justify his \$500 fee, Dr. Imerman wrote a letter to Mrs. P, which reads in part: "I want you to know that this unfortunate incident," says Dr. Imerman in his letter, "would never have happened if your husband had not taken the impertinent method and attitude of reneging on a set and understood fee for professional services" - now get this - "for professional services in obtaining a baby for adoption. Believe me, regardless of what your husband may think, I earned my fee. If you recall, I did make," and here is how he earned his fee, "I did make a complete investigation of the natural parents." Apparently

not a medical investigation.

"I did make certain that there would be no complications regarding the adoption of a non-Jewish baby to Jewish parents. I was present at the delivery and, if you recall, I was present when you took the baby from the hospital. The above are my duties, and just as any professional man doing his job is expected to be paid for his services, a doctor expects the same."

Dr. S, who actually performed all the medical services, was paid \$300. Obviously, Imerman's role in this situation was almost exclusively one of a child placer, and it is upon this basis which he demanded his fee.

Imerman claims that he was being paid for professional services. The very services he enumerated: (a) professional services in obtaining a baby for adoption; (b) conducting the natural parent investigation; (c) ironing out any legal complications about placing non-Jewish children in Jewish homes; and (d) assisting in the physical transfer of the child at the hospital.

These obviously are not medical services. They are child placing services, and the services that agencies do, and the services that Section 1620 of the Welfare and Institutions Code says no one may do without a license.

We have another chart which will show in a quick glance the multiplication of lawyers and doctors in some of these cases and the splitting of fees and distribution of services and money, and so on.

Here is a specific case, one of the transcontinental ones, and you will see what happens or what happened.

MRS. KUPLAN: On this chart is represented the 11 doctors and attorneys involved in one placement across country, San Diego, Los Angeles, and New York, centering the

non-professional or legal activities primarily in Los Angeles. The mother had come to Los Angeles, went to a doctor who referred her to an attorney who referred her to a second, from Dr. 5 to Attorney 12 to Attorney 3. The adopting couple went to Attorney 11, to Attorney 9, to Dr. 1. Dr. 1 and Attorney 3 got together, made the arrangements. The mother returned to San Diego, the child was delivered there.

These individuals here gave professional services called in. Some of the fees in this situation were such as \$1,000 here with a possible one visit, one time, to the hospital in San Diego.

\$600 here; 400 here; 400 here, for example.

In looking at this, there has been a piling up of fees and costs to this family. This represents actually a total for this family of \$3600, 2600 in California and 1,000 in New York.

There are similar fees in respect to these other situations, both on the first chart, which showed the out-of-state ones there on Attorney 1, and these on Dr. 1, such as from \$3,000 up to 4,000, 2500, they varied a good deal.

This particular situation here, the case of Mr. and Mrs. H, appears on this chart here with Dr. 1, Attorney 3 and New York 9.

One of the situations which Judge Koenig referred to this morning in a mid-west state, in Illinois, appears on this chart as Case No. 0, right here. In that particular one, the Department received later a letter from the agency in the mid-west state. This was the one where the family were advised to bring \$1500 to cover expenses. Our total showed a \$1500 payment. The agency wrote us saying there that, "Definitely this is one of the most undesirable adoptive families interviewed in over ten years." The adoptive mother was described



as masculine, domineering, controlling, emotionally unstable, severe mental depression, et cetera.

The father was very shy, retiring, insecure, unstable, marked speech difficulty, difficulty in earning his living, et cetera.

These represent some of the situations into which children are placed where a family is told to come and bring money without any attempt at finding out anything about them other than possibly the color of their eyes. I don't know. Dr. tenBroek?

DR. TENBROEK: Now I will flip through two or three other matters here.

On Page 24 you will find set out some instances in which the attorneys misrepresented the backgrounds of the natural parents in order to make them more attractive to the adoptive couple. A sergeant was raised to a lieutenant, and Catholic children were converted into Jewish children by the mere declaration of the attorney in the case.

On Page 25 you will find some striking instances of false reporting and perjurious statements.

On Page 28 to 36 you will find set out talk about the coercive devices used with the natural mothers. I want especially to call your attention to this in view of some of the questions that were raised this morning.

The suggestion was that part of the difficulty with agency placements is that the natural mothers must make up their minds to relinquish quickly, whereas in the independent adoptions they have plenty of time. Now, I think that is -- the process is just exactly the opposite.

In the agency relinquishment cases, the agency workers give the mother every opportunity to know what the facts are, what her possibilities of support are, what the

considerations and opportunities are, and, above all, she is encouraged to reach a point of stability and equilibrium before she makes a decision at all.

Now, you will see in these devices that the natural mothers often are committed before the child is ever born to make a placement, and various forms of agreements, all illegal, but still of psychological force on the mother, are implied before she delivers to commit her to consenting to the adoption.

And money is withheld, and so on, on the agreed price, until after she has given her consent, so that she will be sure not to make her mind -- not to change her mind in the independent cases.

SENATOR O'SULLIVAN: Mr. Chairman, may I ask a question?

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: Under the regular system of adoption, doesn't the mother relinquish the child before the child is born?

DR. TENBROEK: Oh, no.

SENATOR O'SULLIVAN: When does the mother finally relinquish the child?

DR. TENBROEK: Well, at no specified date, but she goes to the agency and the agency people talk with her. If she needs financial support, they seek to get it for her, seek to make some arrangement by which she can be maintained and solve her problems until she can make a decision about what to do with the child.

SENATOR O'SULLIVAN: Well, you haven't answered my question. When does she finally relinquish the child?

DR. TENBROEK: When she has made up her mind to do that.

SENATOR O'SULLIVAN: Before the child is born or after?

MRS. KUPLAN: After.

DR. TENBROEK: No, no, no. After the child is born, and often quite awhile after.

SENATOR O'SULLIVAN: Then how do you guarantee to the parent, adoptive parents, that the child -- that they will be able to keep the child?

DR. TENBROEK: Oh, well, the child isn't placed immediately with any adoptive parents. The child may be in the care of the agency and/or still with the mother, or any series of things, before the relinquishment actually occurs.

MRS. KUPLAN: Could I enlarge on that, sir? The agency usually works with the mother prior to the birth of the child, talking with her, counseling with her. At the time the mother is ready, after she is out of the hospital and can reach a sound decision, that is when she signs the relinquishment. Some mothers sign this very quickly after the birth of the child. It may be within a week of the birth of the child.

Some mothers take several weeks to make up their minds after the birth of the child, depending on when the relinquishment is signed and filed with the Department, and a valid relinquishment is on file with the State Department. Then and only then is the child placed in the adoptive home.

Most children are placed within a six-week period, but the child is legally free.

SENATOR O'SULLIVAN: That is six weeks after the birth?

MRS. KUPLAN: To the birth.

SENATOR O'SULLIVAN: Or after the relinquishment?

MRS. KUPLAN: No, after the birth and the relinquishment.



SENATOR O'SULLIVAN: Six weeks?

MRS. KUPLAN: About six weeks after relinquishment,  
I am sorry.

SENATOR O'SULLIVAN: They are placed six weeks  
after relinquishment?

MRS. KUPLAN: Anywhere from a few days to a few  
weeks after the relinquishment. The mother relinquishes mostly  
anywhere from a few days after birth up until about six weeks.  
And then as soon as the relinquishment is filed, the child is  
placed.

SENATOR O'SULLIVAN: Now, in the case of an  
independent adoption, what is the average time elapsed from  
birth to the time of final relinquishment?

MRS. KUPLAN: The consent, in many instances, is  
signed within three or four days after the mother leaves the  
hospital, or immediately upon her discharge from the hospital.  
This becomes final --

SENATOR O'SULLIVAN: Well, now, I didn't ask you  
that. I asked you something else.

MRS. KUPLAN: I am sorry.

SENATOR O'SULLIVAN: In the case of independent  
adoptions, when is the relinquishment final after the birth of  
the child?

MRS. KUPLAN: At the time the adoption decree is  
granted.

SENATOR O'SULLIVAN: And that is --

MRS. KUPLAN: About six months after.

SENATOR O'SULLIVAN: About six months after. In  
the case of the agency, though, it becomes final six weeks after  
birth, probably, in the average case? At least by then.

MRS. KUPLAN: As soon as it is filed with the  
Department.

SENATOR O'SULLIVAN: So there actually is a time differential between the two, isn't there, before it becomes final?

MRS. KUPLAN: Yes, sir.

SENATOR O'SULLIVAN: There is about, probably, a four months difference in which the wife, the mother, would have time to change her mind?

MRS. KUPLAN: If she has once signed the consent in the independent, she has thereby limited her rights to the child, and, in order to withdraw the consent, she must appear before the court, petition the court, and ask for a hearing on it with a review and report by the agency or department as to her plan for reclaiming --

SENATOR O'SULLIVAN: Yes, but we are talking -- you know what I am talking about: The final time when she can get that child back. And there is about a four months difference between the agency and the independent adoption, isn't there, on the average case?

MRS. KUPLAN: There would be this time lapse, yes.

SENATOR O'SULLIVAN: That's all.

SENATOR CHRISTENSEN: In regard to the relinquishment, that term is usually applied only to where the agency is involved, isn't that correct?

DR. TENBROEK: Correct.

SENATOR CHRISTENSEN: Is there any statutory procedure to set aside a relinquishment comparable to setting aside a consent in an independent adoption?

MRS. KUPLAN: Not exactly similar, sir.

SENATOR CHRISTENSEN: Pardon?

MRS. KUPLAN: No.

SENATOR CHRISTENSEN: Once the consent, the relinquishment is signed and properly filed with the adoption agency,

has the natural mother the same opportunity to apply to a court to set that aside as she does in the case of an independent adoption?

MRS. KUPLAN: There isn't the same procedure outlined in the relinquishment.

SENATOR CHRISTENSEN: Pardon?

MRS. KUPLAN: There is not the same procedure outlined in the relinquishment up until the placement, up until the time of the filing with the Department of the relinquishment, this can be by the mother's decision or the agency, if they wish to change their minds after the relinquishment is filed. This depends on their mutual agreement. There are instances where a mother comes back and decides she wants to reclaim her child, where the relinquishment has been filed with the Department. If the child has not been already placed in the adoptive home, certainly consideration is given to a return of the child to the mother, depending on what her plans are for the child.

SENATOR CHRISTENSEN: In any event, the Department or agency would have in some way to participate in or consent to the doing away with the relinquishment, is that correct?

MRS. KUPLAN: Yes, sir. Yes, sir. And the mother has the same right to appeal to the courts. There are cases that go to the courts where the mother has wanted to have the child returned to her and the agency has refused this on the basis the child has already been placed for adoption, has been legally freed by her for adoption.

There have been several of these cases in the courts.

SENATOR CHRISTENSEN: But isn't this true? I believe I am following you. Once the child has been placed by the agency, based upon the relinquishment properly filed with



adoptive parents, the natural parent has no right to apply to a court to set aside that relinquishment as she would have in the case of a consent in an independent adoption taken before a representative of the Department, is that correct?

MRS. KUPLAN: I would say so. There have been parents who have gone to the courts on this basis, that they do. But the courts have generally upheld the relinquishment.

SENATOR CHRISTENSEN: What is your position, or the Department's position, if there is ever any reason for a change of attitude on behalf of the natural parent, why wouldn't she have the same rights to set aside a relinquishment as she would have as a consent to adoption, in both cases where the child is with the adoptive parents?

MRS. KUPLAN: In the relinquishment, sir, the relinquishment by law terminates all rights of the parent to the child. This is statutory, that her rights are fully terminated.

In the independent adoption the law provides that the parents' responsibilities continue up to the time of the adoption and actually the rights are not terminated, nor the responsibilities, until the decree is granted. There is no interim, there is no person, no agency, acting for the child as there is in the agency adoption, in the relinquishment.

SENATOR CHRISTENSEN: But in both cases it requires final action by the court in the way of a decree of adoption, does it not?

MR. KUPLAN: Yes, sir.

SENATOR CHRISTENSEN: Based upon a relinquishment or an independent adoption?

MRS. KUPLAN: Yes, sir.

SENATOR CHRISTENSEN: Aside from the fact that the law reads as you have just stated it to be, is there any reason why you know of that the court wouldn't retain jurisdiction in a

relinquishment or agency proceeding to set aside the relinquishment as they would in the case of a consent in an independent adoption?

MRS. KUPLAN: I am not certain I understand your question, sir.

SENATOR CHRISTENSEN: Is there any sound reason for eliminating the natural parents' right to set aside whatever she has done, whether it be a consent in an independent adoption, or a relinquishment in an agency adoption, I mean, why should there be this distinction between the two?

MRS. KUPLAN: The provision has been made for the parents' rights to be terminated by the relinquishment. The statute provides for this. The placement is made on this basis. This is the understanding both of the parent and of the family who are taking the child, that the parents' rights are completely terminated.

Do you want to speak to that?

DR. TENBROEK: Yes. I think, Senator, that the policy answer to your question may be this: That the community has a greater assurance in the case of the relinquishment that the mother has reached a mature and stable decision than in the case of the independent adoption.

SENATOR CHRISTENSEN: Even though the relinquishment be made at a period of time prior --

DR. TENBROEK: Right.

SENATOR CHRISTENSEN: -- a shorter period of time than a consent to adoption?

DR. TENBROEK: Right. Right. I think the period of time doesn't necessarily govern this because, if you wanted to stretch out time, mothers may have many doubts for years and years, and on until the child is an adult.

But basically, if precautions have been taken to

see that she is not under unnecessary economic pressure, or under circumstances that tend to push her into it when she doesn't actually desire to do it, if you have taken precautions against that sort of thing, which you do in the relinquishment case, then you have some reason for drawing a line of distinction between the finality of a relinquishment, timewise, and the consent to adoption in the independent case.

SENATOR O'SULLIVAN: Could I ask one more question on this subject?

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: What financial provisions do you make, does the Department make, for an expectant mother?

MRS. KUPLAN: The provisions through public and private agencies are somewhat similar. Financial assistance is available for living expenses to a mother. There is a maternity fund available to public agencies allocated from funds in a special deposit fund of the State to provide for private medical and hospital care if the mother so desires, and is an unmarried mother.

In the private agencies, most of them also have a similar setup where they are able to provide medical care privately if this is so desired by the mother.

The private agencies also generally have some sources available to provide for financial assistance to the mother.

SENATOR O'SULLIVAN: What do they normally do? You are, I take it, acquainted with what goes on all the time. How much money a month do they pay an expectant mother when she comes to them?

MRS. KUPLAN: This would depend on what the mothers' living expenses are, within a reasonable amount.

SENATOR O'SULLIVAN: Well, I know it would. But



how much? I know it would depend on that. But on the average, how much does the Department provide or does the private agency provide in your experience, if you know, and if you don't know, say so? How many dollars?

MRS. KUPLAN: No, this would run about \$100; 80 to a hundred.

SENATOR O'SULLIVAN: They pay 80 to \$100 a month?

MRS. KUPLAN: This would be depending, of course, as you know, on her living standards --

SENATOR O'SULLIVAN: Do they ever place them out at homes where they work?

MRS. KUPLAN: On occasion the maternity homes, which are not adoption homes, use these more than any other group that I know of.

SENATOR O'SULLIVAN: You don't have any provision for homes where they work and make their keep?

MRS. KUPLAN: The mothers vary considerably where they are in maternity homes. Some of them work in offices more. I think the ones that are known to agencies work in offices more than they do in the wage homes.

SENATOR O'SULLIVAN: Let me ask, are you in the Department?

MRS. KUPLAN: Yes, sir.

SENATOR O'SULLIVAN: May I address this to the witness. Do you know anything about the specific methods by which they support these expectant mothers when they don't have any money?

DR. TENBROEK: No.

SENATOR O'SULLIVAN: You know nothing about it, right?

DR. TENBROEK: Well, almost nothing.

SENATOR O'SULLIVAN: All right. Do you know

anything about how they care for these expectant mothers when they come looking for some help?

DR. TENBROEK: No. But you have the person on my left.

SENATOR O'SULLIVAN: Well, now, just answer. I want to keep this as brief as possible.

DR. TENBROEK: All right. The answer is no.

SENATOR O'SULLIVAN: Do you know whether or not they use this sort of home, farm-out type of thing, that is described in your report here?

DR. TENBROEK: I see from the evidence in this trial that some of the maternity homes had, upon earlier occasions, used one or another of these wage homes as places to which they referred prenatal and postnatal cases.

SENATOR O'SULLIVAN: Well, is this your sole acquaintance with the practice?

DR. TENBROEK: Right.

SENATOR O'SULLIVAN: The evidence in this case?

DR. TENBROEK: Right.

SENATOR O'SULLIVAN: What about the Department of which you are a member of a board that seems to have some jurisdiction over it, don't you know what it is doing?

DR. TENBROEK: Oh, well, I know as much as I have said to you about what they do in the case --

SENATOR O'SULLIVAN: What you have said to me is that you don't know how they take care of these expectant mothers.

DR. TENBROEK: Right. Right.

SENATOR O'SULLIVAN: Is that the situation?

DR. TENBROEK: That is.

SENATOR O'SULLIVAN: All right. That's all.

SENATOR CHRISTENSEN: Mr. Chairman?

DR. TENBROEK: But you have the chief of the

Bureau of Adoptions right here, if you care to find out.

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: I don't like to harp on this question of relinquishment versus consent, but isn't it true that the Department itself obtains from the natural mother the written consent on a form provided by law? And that agent of the Department, it has to be signed in front of her?

MRS. KUPLAN: Yes, sir.

SENATOR CHRISTENSEN: Or he, as the case may be. And that before that is signed and accepted, the Department, through that agent, is satisfied that that person, that natural parent, knows exactly what they are doing? Isn't that true?

MRS. KUPLAN: I would say that we recognize that a mother may be under pressure to give up her child and to sign the consent. We have to take the consent by law. The law provides that we witness it, and it is signed before the agent of the Department, or the agency to which we delegate the responsibility.

Some mothers say that they are giving this up with pressure from their own family, or whatever it is, or economics; that they would rather not. But we do not, we are not in a position to say "Don't sign it." We are not in a position to say we refuse to take it. We take it and then report to the court and what the circumstances were around the taking of it.

SENATOR CHRISTENSEN: Is this true: I don't know whether I understand you correctly, that on certain occasions the Department will allow the natural mother to sign - this is, of course, in the case where a natural mother's consent is required - to allow her to sign this consent even though there may be some doubt as to whether she really means and desires to do so?

MRS. KUPLAN: We cannot refuse to take it if the



mother insists on giving the consent. We are not in a position legally to refuse this, nor are the agencies on the --

SENATOR CHRISTENSEN: If she insists on giving her consent, she wants to do it, does she not?

MRS. KUPLAN: Yes, sir. Under pressure or otherwise.

SENATOR CHRISTENSEN: Don't you inquire and question her?

MRS. KUPLAN: Yes.

SENATOR CHRISTENSEN: And see whether or not it is a voluntary act?

MRS. KUPLAN: We question. We explain the rights. And then if the mother wishes to give the consent, we take the consent.

SENATOR CHRISTENSEN: What other activity do you take in connection with taking a relinquishment other than that?

MRS. KUPLAN: We would question and we would put off taking the relinquishment if the mother appeared to be under stress or strain about signing this, and in a situation where she wanted to explore further what she might be able to do, what she could turn around and do. Some mothers we have had come in who wanted to, insisted on signing the consent, and say that they would prefer not to, but this is the only avenue left open to them. And the difference I would see, sir, is that the fact that in the one instance she would have time, as provided by the agency saying, "You can take more time, we can help you while you come to this decision," and in the other she says, "I am going to sign it regardless. I feel I have to sign it."

SENATOR CHRISTENSEN: Do you mean to say that if the adoption worker was in doubt as to whether the natural mother desired to sign this consent in an independent agency that she must right then and there take that consent because the woman

says she wants to?

MRS. KUPLAN: If the mother insists that she is going to sign it, yes.

SENATOR CHRISTENSEN: You mean to say that under those circumstances the adoption worker could not tell her to think it over and delay it and come back and see her?

MRS. KUPLAN: We have them come to us with attorneys and they insist that this is what they have to do. We have attorneys telephoning to the office after the mother has signed. I don't say that this happens in all cases, sir. I do say that it does occur, that the mother signs, we recognize there is a pressure there, and if the mother says, "I am going to sign," there is very little that a worker can do if she has said, "Well, you think it over," and if the mother says, "No, I am going to do it." She takes it.

SENATOR CHRISTENSEN: You mean where you have actual knowledge that there is participation of someone such as an attorney who is exerting pressure upon this person, you would still take that consent?

MRS. KUPLAN: I would say that we do where there has been the insistence upon giving it. There we are, or the worker is, up a tree.

SENATOR CHRISTENSEN: Is there any rule of law or statute or administrative regulation or policy of the Department that requires that?

MRS. KUPLAN: There used to be a provision that the Department could refuse to take the consent. That was removed from the law.

SENATOR CHRISTENSEN: Was that by statute?

MRS. KUPLAN: That was by statute originally, that the Department could refuse to take a consent, or could at one time write across the face of the consent that it was void,

the mother having changed her mind. This is no longer possible.

SENATOR CHRISTENSEN: That's right. Well, is there any positive statement of law that the adoption worker must take the consent under the circumstances you have related where the adoption worker is cognizant of the fact that there is being pressure brought to bear on the natural mother?

MRS. KUPLAN: The provision of the law is that the agency take the consent as given by the parent.

SENATOR CHRISTENSEN: Is there any positive law that she must do so under these circumstances?

MRS. KUPLAN: It doesn't outline specific circumstances, sir.

SENATOR CHRISTENSEN: I mean the circumstances you have just related, where there is certain pressure brought to bear. Do you know of any?

MRS. KUPLAN: Mr. Wedemeyer was pointing out to me that in many of these instances we don't have the actual proof from the attorney. We do have the information that he is, or the adoptive parents are pressuring for the consent and this is true, that you couldn't, probably, go to a court of law and say that there is this pressure. It is what the mother tells you. She could tell you both sides, as far as that goes.

SENATOR CHRISTENSEN: That would be the situation in either case, would it not?

MRS. KUPLAN: Yes.

SENATOR CHRISTENSEN: Relinquishment or consent?

MRS. KUPLAN: Yes, sir.

SENATOR CHRISTENSEN: Thank you.

CHAIRMAN RATTIGAN: May the record show that Mr. Wedemeyer, who is Director of the State Department of Social Welfare, is now seated next to the witness. Do you want to testify on this point, Mr. Wedemeyer?



MR. J. M. WEDEMEYER: Well, to this point: It seems to me that the point that Mrs. Kuplan has just made is the situation that actually exists. You have in the testimony before you examples of the kind of advance agreements that are made that do put pressure on the person.

Now, the worker in an independent adoption situation, everything may point in this direction, but she won't have this sort of thing. These have been dug out after the fact in some situations that were suspect.

But if she came before the worker and maintained that she was there to sign the consent, she didn't want to go into any of these other things, it would be taken.

Now, in many of these cases, I will say this further: These are the kind of cases that keep piling up on our desk, and in the office where the workers have felt that there were clients under pressure.

These are reported, so-called irregular placements. But the digging out of the kind of thing that is represented by advance agreements, and so on, isn't a thing that a worker can do easily and some situations they have been reported to other officials for review, and so on. But they still need to be established by much more extensive investigation of the circumstances that we could undertake in connection with our investigation of the home, which is our responsibility under the law as it stands now.

SENATOR CHRISTENSEN: Mr. Wedemeyer, if I understand you, what you say, then, this consent is not taken where there is actual conscious knowledge of any pressure being brought to bear on the natural parent?

MR. WEDEMEYER: It all shapes this way, and this direction, and you know that there is something bugging the woman, but you don't have the documents and the sort of thing

which has been developed in connection with these cases after the fact as to why they were under pressure.

Now, with the relinquishment adoption where you are working with the woman, right from the time she first comes in as a pregnant girl or woman, through the whole process of her pregnancy, her maternity care, her care after the child is born, until she is able to think it through and work it through, you know that she has made no advance agreements. You know that she doesn't sign that until she is fully ready.

I wanted to comment on one other question which was asked, and that was the source of care. Obviously, the major source of care for the girls in relinquishment is some form of public aid. Now, to the extent that the girls have a source of support that they can use under reasonably good circumstances themselves, the Department would not, the local Department would not put in aid.

MRS. KUPLAN: No.

MR. WEDEMEYER: They might expect them to use that. Such as some of these girls are living with relatives. Others are being maintained as public assistance recipients if they are without funds and without resources and not able to work.

Others of them have jobs and continue to work.

SENATOR O'SULLIVAN: What you have just said is that there isn't any program by the Department through the Division or Bureau of Adoptions to give these people assistance independent of County aid or State aid?

MR. WEDEMEYER: No. It is through the public welfare, public assistance programs.

SENATOR O'SULLIVAN: There is no separate program?

MR. KUPLAN: Oh, no. I am sorry.

MR. WEDEMEYER: Only for the maternity care.

SENATOR O'SULLIVAN: And that would just include

the hospitalization surrounding the delivery?

MRS. KUPLAN: And medical care.

MR. WEDEMEYER: Yes.

MRS. KUPLAN: Medical care and medicines.

SENATOR O'SULLIVAN: That's all.

MR. WEDEMEYER: That's right.

MRS. KUPLAN: That's right.

SENATOR O'SULLIVAN: In other words, you have nothing analogous to what has been offered here to these girls in the way of a few dollars to get by independent of going to the local welfare department?

MR. WEDEMEYER: No, not as a general thing. Not as a separate program. We consider the public assistance program as the source for this when it has to be done.

SENATOR O'SULLIVAN: Yes, I know. I am just wondering if you have an opinion as to whether a program along those lines might be helpful --

MR. WEDEMEYER: I certainly would.

SENATOR O'SULLIVAN: -- in combating this sort of thing. You think it would?

MR. WEDEMEYER: I think it would.

SENATOR O'SULLIVAN: You think you ought to have that as an additional tool of the bureau of adoptions? I mean the independent of need, and all the restrictions that go with County aid. But as a sort of an emergency thing that you could use pretty much at your discretion?

MR. WEDEMEYER: I think it would make for a much more flexible program. I am not dissatisfied with the present arrangements, which I think work fairly well. But it certainly would make for a more flexible program and one that might be more attractive just as medical care for the aged is more attractive if they don't have to go through the welfare office



to get it.

CHAIRMAN RATTIGAN: May I ask at this juncture, are we now in agreement that the only form of assistance available to the typical needy, unwed mother in her prenatal condition is public assistance?

MRS. KUPLAN: Private agencies may provide assistance, which is not from public funds. But it is from their own endowments, or their own money they receive.

CHAIRMAN RATTIGAN: In the case of a public agency it would be public assistance only?

MR. WEDEMEYER: Yes.

CHAIRMAN RATTIGAN: And it would not fall within any of the categorical aid programs, would it?

MR. WEDEMEYER: Aid to needy children.

CHAIRMAN RATTIGAN: Where the child doesn't exist?

MR. WEDEMEYER: Oh, yes.

DR. TENBROEK: Unborn children are eligible.

MR. WEDEMEYER: Unborn children are eligible under our law.

CHAIRMAN RATTIGAN: And the mother is ineligible for caretaker support?

DR. TENBROEK: Right.

MR. WEDEMEYER: Right.

MRS. KUPLAN: The County may provide funds in their own program for the mother.

CHAIRMAN RATTIGAN: Assuming the County is in the habit of so doing?

MRS. KUPLAN: They have more for this program, I think, than they do generally speaking.

CHAIRMAN RATTIGAN: The policy varies County from County, does it not?

MRS. KUPLAN: Yes, sir.

MR. WEDEMEYER: Generally speaking on that, Senator, this would be one of the factors that is taken into account before you decide whether it is a licensed legal agency: Is there a source by which they can help these mothers? Are they willing to use public assistance money where necessary? This is one of the factors before they are licensed to operate as a licensed adoption agency.

CHAIRMAN RATTIGAN: All right. Are there any more questions?

SENATOR O'SULLIVAN: I have got just one other. Is the aid that is expended by the private agencies to these mothers dependent upon their relinquishment of the child? Is that clearly understood?

MRS. KUPLAN: That's right.

MR. WEDEMEYER: It is one of the conditions for licensing private agencies.

CHAIRMAN RATTIGAN: What was that answer?

MR. WEDEMEYER: It is one of the conditions for licensing private agencies that they operate without that kind of pressure.

CHAIRMAN RATTIGAN: Are there any further questions on this point?

Would you proceed, Dr. tenBroek, and can you shortly conclude?

DR. TENBROEK: Yes. I will wind up here. I just want to get back on the main track of the situation here, and that will take me about one or two minutes.

If you will towards the end of my testimony, I think it is around Page 42, or so, in the printed copy, I have a heading there called "The Upshot of the Legal Proceedings." Two or three significant things came out of these indictments on the law side, I think. One is that a very extensive challenge

to the constitutionality of the placement statutes failed before the District Court of Appeals and the Supreme Court. Now, that puts these statutes on a firmer constitutional basis than they have ever been before.

On the other side, however, you have the instructions of Judge Walker to the jury in this case.

Now, I produce an analysis of those instructions, indicating that, one by one, I think those instructions are either entirely incorrect or of doubtful correctness, and have a number of weaknesses in them. You can look that over as you please.

Then I make a summary statement here which I would like to read to you:

"Whatever may be thought correct or incorrect about these instructions considered one by one, as a package they do not deal with the over-all transaction but only with pieces and bits of it. Steps and episodes which independently and individually examined may be perfectly lawful could, at the same time, viewed collectively and as an integrated whole, constitute a course of conduct which is highly unlawful.

There was no instruction which dealt with the lawfulness of the whole pattern of conduct undertaken by these defendants - the large scale commercial character of the enterprise involving many children, many natural mothers and adoptive couples, thousands of dollars in fees and expenses each year; interstate and transcontinental operations; a planned course of recruitment of natural mothers and adoptive parents; economic exploitation and other maltreatment of natural mothers in wage homes; referrals and business interrelationships between lawyers and lawyers, doctors and doctors, lawyers and doctors; established practices with respect to the amounts to be paid to natural mothers or demanded from adoptive couples; techniques for



handling the contacts, if any, and relationships, if any, between natural mothers and adoptive parents; doctors and lawyers retaining amounts of money only part of which could be explained, sometimes none at all, in terms of intermediary functions and brokers and relations; lawyers and doctors sometimes arranging for placement of the child in a home for temporary care pending transfer of physical custody to the adoptive couple; the utilization of coercive devices to deter the natural mother from changing her mind about the adoption; the steady undercurrent of false reports and affidavits; failure to make full disclosure and of actual solicitation of perjury.

"In my opinion, these instructions were defective and inadequate. That, however, is less important than the fact that they were given. As interpreted by them, the law as it stands is not and was not sufficient to break up these widespread abuses and great social evils perpetrated by a group of doctors and lawyers engaging in a transcontinental baby brokerage business.

"Given once, such instructions may be given again. Indeed, they are likely to be given again. Even if not repeated on other occasions, the law they interpret and apply lacks the potency to cope with the present situation. The unavoidable implication is that the law itself must be amended."

Now, you will find set forth there a list of the suggestions to amend it that Mr. Wedemeyer is making, and Mr. Frank Sloss, and I give those suggestions support.

CHAIRMAN RATTIGAN: Dr. tenBroek, it is not explicitly stated in your suggested amendments to the adoption law, but may I ask you the categorical question: Do you think the independent adoption proceedings should be retained in California, or do you think it should be prohibited?

DR. TENBROEK: I think it should be retained.

CHAIRMAN RATTIGAN: That answers my question.

Mrs. Kuplan, could you answer the same question?

MRS. KUPLAN: Yes, sir, I think the independent adoption proceedings should be retained.

CHAIRMAN RATTIGAN: We have been talking particularly throughout the testimony of both of you about a group of people which I take to be quite limited in number.

DR. TENBROEK: Right.

CHAIRMAN RATTIGAN: They have been identified in terms of eight attorneys and one doctor in California who have been identified by number. Other numbers have been used indicating that there may be more under scrutiny. Five people, four attorneys and one doctor, have been named by proper name and there are a couple of other proper names in the written testimony.

Do you have the impression that these practices are carried on by practitioners of either profession outside the group that you have been talking about?

DR. TENBROEK: Well, we would say that there probably are some more, but that we know most of them.

CHAIRMAN RATTIGAN: And if you know most of them, how many do you know?

DR. TENBROEK: Oh, well, I would say that you could wrap this whole thing up in a package of 25 or 30 or 35 people.

CHAIRMAN RATTIGAN: There are 20,000 attorneys in California.

DR. TENBROEK: Right.

CHAIRMAN RATTIGAN: Actually, the incidence of misbehavior is quite small, isn't it, on a per capita basis?

DR. TENBROEK: Oh, yes, as in lots of programs the incidence is quite small, but the incidence may be so severe as to create a real question.

Since, however, this is not a widespread problem in terms of the numbers of lawyers and doctors, I am still in

favor of independent adoptions, or the mother, the natural parent placement. But I think we have got to have enough law to take care of this kind of very serious situation.

CHAIRMAN RATTIGAN: Being perpetrated by 25 people?

DR. TENBROEK: Oh, sure. That is, not many people, only a small percentage of all the people in the country commit murder. But you have got to have enough law to take care of that.

CHAIRMAN RATTIGAN: The question arises if we have existing law, however, whether we should change it and set up sanctions such as we have in the case of homicide, to deal with something which is being perpetrated by a very small number of people. Might it not be more expedient just to eliminate the people?

DR. TENBROEK: Well, that remedy may be sufficient if you want to provide by legislation.

CHAIRMAN RATTIGAN: I am referring, of course, to disciplinary proceedings within the provisions affected.

DR. TENBROEK: But we have tried that, you see. That is what I pointed out.

CHAIRMAN RATTIGAN: Have we?

DR. TENBROEK: Oh, yes.

CHAIRMAN RATTIGAN: Who is "we"?

DR. TENBROEK: The Department of Social Welfare and the County adoption agencies. The State Department of Social Welfare and the County adoption agencies.

CHAIRMAN RATTIGAN: And in doing this, what have "we" done?

DR. TENBROEK: We have referred cases to the Bar Association and to the Medical Association with such evidence as we had against them.

CHAIRMAN RATTIGAN: And nothing happened?



DR. TENBROEK: Right.

CHAIRMAN RATTIGAN: If either or both professional associations took steps that resulted in professional sanctions, discipline, disbarment, possibly criminal prosecution, do you think that would suffice as far as amending the law is concerned?

DR. TENBROEK: Well, I think that if sanctions were imposed by the professional associations and it became established policy on the part of these associations to take care of this situation, then that would solve the problem that now confronts us in this serious way.

CHAIRMAN RATTIGAN: Do you think the independent adoption proceeding, or the law pertaining to it, should require that the parties to it meet in person?

DR. TENBROEK: My attitude about that is that the meeting in person is only a bit of evidence that relates to the question of whether there is a placement. The law requires -- the law permits parents to make a placement. On the question whether the parent make the placement is a question of fact.

Only one circumstance in determining the answer to that question is whether they have met. It is hard for me to see how the parent could actually make the placement without herself making a considerable exploration of the suitability of the adoptive couples' home, and it is hard for me to see how she could know that without running across the adoptive couple.

CHAIRMAN RATTIGAN: Of course, in a relinquishment adoption she never knows it at all.

DR. TENBROEK: Right.

CHAIRMAN RATTIGAN: Except to the extent that she relies on the agency.

DR. TENBROEK: Correct. But the law allows her, and only her, outside of licensed persons, to make the placement. And what goes on in these cases is that other people are making

the placement and they are making it as a financial matter.

CHAIRMAN RATTIGAN: Mr. Wedemeyer?

MR. WEDEMEYER: May I point out one thing in view of the questions that have been raised around the consent and the difference between consent and relinquishment. In theory, at least, the mother in relinquishing her child to an agency, makes the placement with that agency. She places her child for care with that agency. So that in that instance there is at least a theoretical base for saying that the mother has made that choice and decision.

She knows when she signs that relinquishment that that agency is authorized and fully responsible to act in every way toward that child as far as an agency can, as to carry the parent, the full responsibility of the parents for it, until it is 21 or until it is adopted.

I think that is quite a difference between the two. I thought perhaps it ought to be mentioned in view of the questions that have occurred this afternoon.

CHAIRMAN RATTIGAN: Thank you, Dr. tenBroek and Mrs. Kuplan.

DR. TENBROEK: Thank you, sir.

MRS. KUPLAN: Thank you.

CHAIRMAN RATTIGAN: Mr. George Wakefield.

MR. GEORGE W. WAKEFIELD: Mr. Chairman and members of the Committee: I am George Wakefield, Chief Assistant County Counsel of the County of Los Angeles, appearing here today in behalf of the Board of Supervisors of the County of Los Angeles.

I want to say preliminarily that we appreciate this opportunity to present the point of view of Los Angeles County with respect to some of the problems that have been discussed thus far, and I am sure will be discussed during the remaining portion of your session.

I have prepared a statement in writing which the members of the Committee have, I think. I will be glad to read that statement, or I will be glad to attempt to summarize it in view of the shortness of time which the Committee has available to it. I will be glad to handle the matter in any way which the Committee desires.

Basically, what is involved in this statement is some support and recommendation predicated upon three bills which were sponsored by the County of Los Angeles and introduced at the last session of the Legislature. Those three bills are Assembly Bill 2682, 2763, and 2683.

I might say preliminarily that those bills were a culmination of the best thinking of those in the County of Los Angeles who have some responsibility in this field, based upon the joint recommendations of the Bureau of Adoptions, the District Attorney's office, and others interested in the general problem of adoptions.

I will be glad to proceed in any manner which the Committee might desire, if you would like to have me read the statement or parts of the statement. I will be glad to do so.

CHAIRMAN RATTIGAN: Generally speaking, you are expressing support of the substance of the three bills named in your statement, are you not?

MR. WAKEFIELD: That is correct, Senator. Yes, sir.

CHAIRMAN RATTIGAN: These are bills which were referred to interim study during the recent session of the Legislature?

MR. WAKEFIELD: Yes, sir.

CHAIRMAN RATTIGAN: I don't mean to get ahead of you, but I have one observation pertaining to the bill requiring that an accounting of expenditures be filed in an adoption proceeding. Your statement reads, on Page 7, "The information



thus filed in court could be used as a basis for investigation and possible prosecutions for violations of adoption laws."

Well, I have two questions: If such a bill were passed, and that became the law, and information filed in court in a given case were used for a basis for investigation and possible prosecution, what would happen to the adoption itself since, under existing law, even as prospectively amended, the only finding that the court makes in the heart of the matter is the best interests of the child?

MR. WAKEFIELD: Well, it was not intended, Senator, that the accounting filed itself carried with it any implication insofar as the actual granting or denial of the petition as far as the adoption is concerned.

I might call the Committee's attention to the fact that Section 226 of the Civil Code provides, in part, that the investigation which is made by the licensed County adoption agency is to ascertain whether the child is a proper subject for adoption, and whether the proposed home is suitable for the child prior to filing a report with the court.

Now, those provisions are conceived by the people that handle adoption matters in our County agency, at least, to be something different from the actual placement of the child for an adoption in the first instance. And, consequently, we felt that neither the adoptive parents nor the child itself should be penalized by what had been done by third parties, in effect intermediaries, in the adoption process.

CHAIRMAN RATTIGAN: You would employ the discovery proceeding and its consequences, then, as a method of identifying and pursuing parties other than the adoptive parents, or the natural mother in a proper case?

MR. WAKEFIELD: That is correct.

CHAIRMAN RATTIGAN: The bill never was so limited and it never did say that.

MR. WAKEFIELD: Well, Assembly Bill 2683, I think, is the bill. Now, there were two or three bills that dealt with this subject, Senator Rattigan. There was a bill by Assemblyman Leggett, which originally, in the form in which it was introduced, did carry a penalty in the sense that the court would be authorized by its original provisions to provide for a denial of the adoption petition itself.

Such a provision was never included in the recommendations made by our County, nor in Assembly Bill 2683, so far as I know.

CHAIRMAN RATTIGAN: There is a transposition of numbers in these three bills. One is 2863 and one is 2764, I think, and one is 2683. I am not sure, but I think we ought to get it straight at the beginning because this was very confusing when we were trying to deal with these bills during the Legislature.

MR. WAKEFIELD: Yes. I hold in my hand a copy of Assembly Bill 2683, by Assemblyman George A. Willson.

CHAIRMAN RATTIGAN: All right.

MR. WAKEFIELD: And that was the bill which was sponsored by the County of Los Angeles.

CHAIRMAN RATTIGAN: That is Assemblyman Willson's bill which contained within it no sanctions whatever.

MR. WAKEFIELD: No sanctions whatever, yes, sir.

CHAIRMAN RATTIGAN: Just the mandate that it be done.

MR. WAKEFIELD: Yes, sir.

SENATOR CHRISTENSEN: Mr. Chairman, if you could pull that mike back a little?

MR. PHANSON (Soundsciber Corporation): No, the gentleman at the witness stand. That's right. Yes, yes. Just pull it back.

CHAIRMAN RATTIGAN: Just back off a little, please.

MR. WAKEFIELD: I am sorry.

CHAIRMAN RATTIGAN: The bill that had in it something that the court could do, something in the nature of sanctions, was Mr. Leggett's bill 2863.

MR. WAKEFIELD: That is my recollection, yes, sir.

CHAIRMAN RATTIGAN: And all that said was that the court could deny the petition if the interests of the child would not be served by granting it.

MR. WAKEFIELD: Yes.

CHAIRMAN RATTIGAN: Which had nothing to do with the filing or non-filing of an accounting, and only stated what the law already states.

MR. WAKEFIELD: I think that is correct.

CHAIRMAN RATTIGAN: You would disassociate compliance or non-compliance with this requirement from the merits of the adoption proceeding itself?

MR. WAKEFIELD: Yes.

CHAIRMAN RATTIGAN: If there is ~~scha~~ law, don't you think it ought to say that?

MR. WAKEFIELD: Perhaps. Perhaps. We certainly would have no objection to saying that, because that is actually the intention of the recommendation that was made.

CHAIRMAN RATTIGAN: And one other question and I am not assailing with questions about some other bill because I recall the bills themselves, but since it does embody the recommendations of the people from Los Angeles County, the one, 2863, Mr. Leggett's bill, requiring an accounting from which that sanction was later deleted, said that the bulk of the accounting, and I am paraphrasing now, would go to the State Department of Social Welfare which would advise -- oh, the clerk of the court sends a copy of the report to the State Department of Social Welfare. I am looking at the bill as introduced on the second page, the reverse side.

MR. WAKEFIELD: Yes.



CHAIRMAN RATTIGAN: Commencing now at Line 3, the Bill as amended June 3rd, the Bill was heard by the Senate Committee on Judiciary a little later than that, during June. It was amended at least once before it got to the Senate Committee.

MR. WAKEFIELD: Yes. I think that particular Bill was amended at least once, perhaps twice.

CHAIRMAN RATTIGAN: But as it came to the Senate Committee it contained the sentence "The Department shall review the report promptly and shall advise the Court of any items contained therein which appear questionable."

And I say again "questionable."

When this Bill was heard in the Senate nobody could ever explain what that meant.

MR. WAKEFIELD: Well, I have a little difficulty trying to explain what it actually means also. One of the basic problems in this field, and one which I think the Committee needs to keep in mind, is the fact that the adoption files themselves are not public records in the same sense that any other proceeding filed in court is a public record. Likewise, the information on file in the Bureau of Adoptions is not public in the same fashion that other information is filed in a public office and maintained in a public office. And the reason for that is obvious. The difficulty, then, comes from the difficulty in ascertaining specific information with respect to practices that are sometimes associated and have been described to you this morning with the adoption process.

And the real problem is how to get at these problems and how to deal with them without, at the same time, penalizing these people that are essentially the innocent bystanders in the practices which we seek to expose and to eliminate.

I have reference, obviously, to the natural mother on one hand and the adoptive parents on the other, who both proceed into this relationship on a good faith basis from

their own point of view, and from their own desires. This procedure that has been described here, and the procedure that is contained in Assembly Bill 2683, is simply a means by which the spotlight of publicity may be turned upon what many people consider to be a very dubious and unethical, if not illegal, practices in this particular field.

The Committee has suggested that perhaps we are dealing with a problem of ethics, a problem that could be resolved by the medical profession and the legal profession within the framework of their own existing procedures, and the discipline of their own members. The only answer I can give to the Committee to that is that that route has been tried and thus far nothing has been accomplished from the standpoint of the problem. There has been no -- well, there has been some recognition of the fact that there is a problem, but neither the State Bar nor the Los Angeles County Medical Association has taken any affirmative step designed to eliminate the problem as we see it. And one of the things that we think will help in this regard is to have available specific factual information from which interested groups, such as the State Bar, and the Los Angeles County Medical Association, may have available information, the type of thing that is actually going on.

Now, the presentation that has been made here today is the first presentation that I know of where there has been any attempt to set forth definitively and specifically with reference to actual situations some of the things that public agencies, private agencies, private individuals interested in the field of adoption have long felt existed, but were unable to put their finger on and say, "Well, this is the evil. How, now, do we deal with it?"

We don't claim that Assembly Bill 2683 is the complete answer to the problem. It is simply a first step.

After all, we are dealing here in an area which is fraught with emotion. It is an area in which things are done under tension, the pressure of emotional stresses and strains, they are done in an atmosphere which is not always conducive to logical and comprehensive thinking of a problem, and we think that that needs to be recognized, too.

On the other hand, we need to find some means of segregating the good from the bad in the situation, and being able to identify the bad, giving people an opportunity to say, "Well, we think this is bad or it isn't bad."

Now, maybe some of the things that have been described here will produce a great deal of difference of opinion as to whether it is good or it is bad. But until the facts are out on the table, until we have an opportunity to evaluate these facts, and to weigh them, we have no real basis for coming to any sound decisions in this problem field.

CHAIRMAN RATTIGAN: Your three proposals, again, would make it a reducible felony to place a child without a license; you would require an accounting to be filed in the adoption proceedings; and, just so I am clear, what is the third one?

MR. WAKEFIELD: There are, in addition to prohibiting the actual placing of the child as it is now done by Section 224q, we think there needs to be some words added to that general category so that perhaps, from a Legislative standpoint, we are a little more definitive about the thing that we are intending to prohibit.

CHAIRMAN RATTIGAN: So you would prohibit -- go ahead.

MR. WAKEFIELD: So we would prohibit the finding, procuring or referring of a child for adoption as well as the actual placement itself.



Now, the finding, procuring or referring are things which we think should not be done for compensation by unlicensed persons, whether that person be a lawyer, a doctor, a minister, or a next door neighbor. It is the receiving of compensation for those things which we consider to be the crux of the evil. And it is those things which we think should be prohibited along with the act of placing.

Now, I am sure the Committee is well aware of the problem of attempting to say with any certainty what constitutes the placing of a child for adoption.

I am not an expert in that field, and I am sure anything I might say would simply add to the confusion, except, in general, I think the public agencies have followed the prior opinions of the Attorney General in this field as being the one specific definitive thing that is available.

Now, if we disagree with those opinions, and what they attempt to do with respect to the definition of placement, then I think we need to re-examine not only agency practice, but other practices in this field.

But you can't say, as I see the problem, that the mere fact that a natural mother in some rather intangible and unsatisfactory form actually meets and confronts adoptive parents is sufficient to constitute the act of placement on the part of the natural mother. As I see it, what is actually involved is a voluntary understanding on the part of the mother of the fact that she is giving up her child to be placed in the home of another. And to do that she must be convinced not only of the type and nature of the family with whom the child is to be placed, she must know something of the family background. She must have enough information at her own command, and within her own knowledge, to make a valid judgment. And I think that is all that we are really saying

is involved in the act of placement. And if the mother has that information, makes that decision, then she, in effect, has placed the child.

Now, on the fringes of that Act come many influences to bear. And some of those influences may be good, some may be bad. But the problem is to identify and to segregate out the good from the bad, and that is what I think we have attempted to do with the first Bill, which is the Bill that would add finding, procuring, or referring to the penalty that is now attached to the placing of children so that all of those acts which are really auxiliary but really perhaps a very essential part of the placement process are also prohibited by expressed law.

We don't get into that argument about whether the person who actually locates an adoptive parent that the natural mother never sees has actually placed the child with those adoptive parents or hasn't. At least he has found the adoptive parents. And if we agree that that is a bad practice and should be prohibited, then we should put into the statute something that prohibits it so that we are not caught in this maze of uncertainty that surrounds an accepted definition of the word "placement".

Now, that is one of the problems that we have been wrestling with, it is one of the problems that State Bar Committees have wrestled with. They have attempted to set up their own definition of placement, perhaps, of what is or is not a placement of a child, how far an attorney may go, how far a doctor may go, how far a friend may go in this field; what we have attempted to do is remove some of the uncertainties without again attempting to define "placement" because the more you attempt to define it, it is like negligence: You get into an area in which the fringe activities which are generally agreed

to be desirable continue to be fringe activities.

They never get to the point where anybody can say with certainty that this is or is not prohibited.

Now, one of the problems, as I understand it, in the prosecution of the cases that were involved here in Los Angeles was the fact that because, as you gentlemen well know, the Grand Jury has no right to indict for the commission of a misdemeanor, the crimes that are associated with the placing of children are misdemeanors. In order for the Grand Jury to take cognizance of the activity, the Grand Jury indicted for a conspiracy; a conspiracy to commit misdemeanors, which is made by law a felony.

The next step in the problem, then, becomes the problem that is involved in *People vs Bowman* about 156 Cal. App. 2nd, in which the Court said you have to have a specific intent to violate the law in order to be guilty of a conspiracy. So here was a situation where there was uncertainty, indefiniteness as to what the law actually prohibited; people claimed in good faith that they were not violating the law and they did not have any intention to violate the law. It is true they did this and this, but they thought it was a perfectly lawful activity and they paraded before the Court and the Jury people who professed to be experts in the field who can't agree among themselves as to whether it is or is not a prohibitive activity, and naturally the people are going to be acquitted. It is the only sane thing, or the only valid conclusion that a court or a jury could come to under the circumstances.

So, to root out these practices, it seems to me that we have to do something at the legislative level.

Now, I don't purport to say that these three Bills are all the answer, or that they are the most satisfactory answer. But I do say to the Committee they represent our



considered judgment as to what should be a minimum first step in attempting to deal with the problem.

CHAIRMAN RATTIGAN: As I understand it, you would make it a reducible felony to violate the section which prohibits placement? You would simply make it unlawful to accept any remuneration to find a child for placement, meaning a misdemeanor?

MR. WAKEFIELD: No, that would also -- the penalty would also be raised in connection with that section also, Senator Rattigan, so that the finding, procuring, referring or placing of children for adoption would be a felony reducible to a misdemeanor by a misdemeanor sentence. And the reason for that, basically, is that we think that would give more local control of the enforcement of the provisions of the statute because it would provide for an opportunity for the Grand Jury to investigate charges that were made to it, it would provide for the District Attorney to investigate complaints that come to him on a uniform county-wide basis, and it would lengthen the period of limitation which is applicable to the crime which would provide more time within which the investigation could be carried on, recognizing the difficulty of identifying the practices we are referring to and the difficulty of pinpointing the kind of violation that we are striking at.

CHAIRMAN RATTIGAN: Just one other question and I am only repeating what occurred before in our experience with these specific bills. Where you make it a reducible felony to offer any money in connection with the finding of a child for adoption, there could conceivably be a case where an attorney, say, did find a pair of adoptive parents for a natural mother, who, thereafter, made a completely proper personal, well informed, face-to-face physical placement.

MR. WAKEFIELD: Wonderful. But if the attorney

got paid for finding those adoptive parents, then we think that is something an attorney shouldn't be paid for. He should be paid for the legal services he renders, not for the finding of the adoptive parents.

CHAIRMAN RATTIGAN: You are still not making it illegal to do it, though?

MR. WAKEFIELD: No, sir. No, sir. All that is prohibited by this proposal is that it is illegal for him or for anyone else to accept compensation for the finding of those adoptive parents.

CHAIRMAN RATTIGAN: How about making it a felony to find adoptive parents?

MR. WAKEFIELD: That is what the proposal is.

CHAIRMAN RATTIGAN: The proposal is not to get paid for it?

MR. WAKEFIELD: To be paid for finding, not -- the actual finding themselves, itself, is not prohibited.

CHAIRMAN RATTIGAN: Do you think that would contribute to a solution of the problem?

MR. WAKEFIELD: I believe so. And actually there is nothing basically wrong, morally or from the standpoint of public policy, as I see it, of a friend, a neighbor, a relative, suggesting to a natural mother that the Smiths would like very much to adopt a child. We know they are fine people, they would make wonderful parents, they aren't able to have children of their own; why don't you go see them.

So the mother goes and sees them and completes the arrangement. There is nothing wrong with that, as I see it. And I speak at this point only for myself. What is wrong, it seems to me, is when that neighbor, friend, attorney, doctor, or what not, is being paid by the Smiths to find a child for him. Part of his compensation has nothing to do with the legal

services he renders, but is predicated upon the success or failure of the arrangement which he makes. Therefore, he has a certain compulsion to complete that adoption on the basis of the arrangement that he has made because his compensation is contingent upon that culmination with the net result that we find instances of practices which have been described to you here where the nationality, the age, the status of adoptive parents, or natural parents, is concealed simply because that concealment is a necessary step in the ultimate consummation of the adoption itself. And part of the compensation that is received by this so-called intermediary is for the act of finding the adoptive parents or the baby, as the case may be. And it is that payment of that fee for the finding of the child which we think should be prohibited, not the act itself as it goes on in the common experience, I think, of attorneys and doctors generally.

CHAIRMAN RATTIGAN: This is only a comment, and perhaps an argumentative one. But this will probably come up again in the form of legislation. I am only pointing out that neither bill nor your explicit proposal here say that. They do not refer to the payment of money in exchange for finding or predicated upon the contingency of finding. They prohibit the offering or giving of money "in connection with" finding, referring, or placing.

This is a penal statute which would go to the dimensions of a felony.

MR. WAKEFIELD: That's right. Now, the use of the word "connection" was a matter of some debate and consideration here at the local level. The problem, basically, is the problem that finding, like placing depends upon factual circumstance, and unless you are able to select some adjective that brings into the periphery of the application of the Penal



statute those acts that are in connection with it, it seems to me all you do is add to our statutes some more words which are as capable of being evaded by the person who designs to evade them as the word "placement" itself.

CHAIRMAN RATTIGAN: I have heard some observe, including myself, I guess, that as long as we skirt the heart of the matter by calling it a felony or calling it a misdemeanor, or by prohibiting the offering or acceptance of money, we are still doing just that and we aren't going to solve the problem. And that the way we can solve the problem and retain the independent adoption proceeding is by meticulously defining "placement" in the statutes.

I wonder if you would comment on that observation?

MR. WAKEFIELD: My only comment is to say God bless the person that can do it.

CHAIRMAN RATTIGAN: I am sure that answers my question.

Are there any questions of Mr. Wakefield?  
Senator Christensen? Senator O'Sullivan?

SENATOR CHRISTENSEN: Well, this might muddy the waters, but as I understand it, the act of placement, whatever it may consist of today, is unlawful, irrespective of whether it is connected with profit, or receipt of consideration of any kind. Isn't that correct?

MR. WAKEFIELD: That is correct.

SENATOR CHRISTENSEN: So we are injecting, with your suggestion, the new concept, an additional element of having to prove that it be done for profit.

Would you care to comment as to whether that would be any aid or detriment to a prosecution for a placement?

MR. WAKEFIELD: Well, in my opinion it would

be an aid to prosecution. If you take the profit out of the activity, my personal conviction is that people will no longer be interested in engaging in the activity.

SENATOR CHRISTENSEN: If it is a crime today without profit, why would it be any more of a crime with profit?

MR. WAKEFIELD: Well, just as a practical matter, Senator, I think you would find, or any prosecutor would find it extremely difficult to prosecute successfully a case of placement in which there was no personal gain or personal advantage to the person performing the act of placement.

SENATOR CHRISTENSEN: I was thinking frankly of the contrary, a situation where you are prosecuting one of these attorneys who apparently participated in acts which may amount to placement, receives \$3,000 for services that are normally probably worth \$200, where it is not necessary to prove the receipt of any unnecessary profit. I mean the receipt of any fees which can't be related to the rendition of services for a reasonable amount.

MR. WAKEFIELD: Well, Senator, this is one of the basic problems that is involved here. Perhaps the suggestion that was made this morning that the Legislature needs to authorize the court to set the fees for the attorney's services is one partial answer to the problem.

At that point it seems you give the court an opportunity to decide what value is to be attributable to the legal services that the attorney has performed and the court then sets his fee accordingly. You avoid by that process the common assumption that many people make in this field, that because an attorney charges \$3,000 for an adoption which is, from the standpoint of the legal work involved, work that doesn't involve any more than a default divorce, and maybe not as much, is being overpaid for the legal service he has rendered and must be being paid for something else.

SENATOR CHRISTENSEN: But we are talking about the amount of the fee for a doctor or a lawyer at the time he performs certain acts which long precede the time that the court ever has anything to do about fixing a fee. And obviously you can't make a crime out of an antecedent act where it is dependent upon a finding of reasonableness by a third person in the future.

I think what we are talking about is somehow to define a crime, if you want to inject this element of profit, at the time of the act which may amount to this placement or finding or procuring or referring.

Obviously, the services have been rendered, nor have the -- the legitimate services have not been rendered, nor has the court had any occasion to fix the amount thereof. Even if we had such a law, I don't see how that would be --

MR. WAKEFIELD: Senator, wouldn't it be similar to a probate proceeding where, in effect, the attorney takes the case, he carries it through, when the estate is finally closed his fee is fixed and paid to him?

Now, aren't we talking here about the same sort of thing, where an attorney takes a case and the vice, as I see it in this problem, is that the attorney, from the evidence that has been described, in effect says, "All right, for \$3000, which you deliver to me tomorrow, I will be able to hand over to you that night a baby and we will set the wheels in motion so that that child can ultimately be adopted by you."

SENATOR CHRISTENSEN: That is the conduct that you seek to prohibit.

MR. WAKEFIELD: That's right.

SENATOR CHRISTENSEN: And anyone that takes profit for that particular act, you believe that that kind of conduct should be made a crime, which is not now a crime?

MR. WAKEFIELD: Apparently not.



SENATOR CHRISTENSEN: But if it does amount to placement today, with or without profit, a gratuitous act, it would be a crime provided it be a person not authorized to do that.

MR. WAKEFIELD: That is correct. But the problem is, has the placement occurred or has it not, regardless of compensation?

Now, if you are able to prove that an individual has been compensated for the act of placement, it seems to me that that simply compounds the nature of the crime he has committed and maybe we need to have two sets of crimes, misdemeanors for those who simply place, felonies for those who do it for money. I don't know.

SENATOR CHRISTENSEN: We also may be confronted with the problem of being required to prove as an element of the crime the receipt of some kind of a profit.

MR. WAKEFIELD: Profit.

SENATOR CHRISTENSEN: Which the law doesn't presently require the prosecution to establish.

MR. WAKEFIELD: That is correct.

SENATOR O'SULLIVAN: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: I was just trying to figure out a statute. I would like to have your comments on this.

Anyone who for purposes of adoption for money, services, or anything of value, finds, procures, refers or places a child or, for money, services, or a thing of value procures or refers a parent for a child for purposes of adoption is guilty of a felony.

Does that cover your situation?

MR. WAKEFIELD: Senator, you have now touched upon the same question that Senator Rattigan raised about whether these acts, standing alone, are identifiable and can be prohibited

and get the job done, or do you need to have some adjective that also brings the fringes thing in, that is --

SENATOR O'SULLIVAN: What do you have besides this that is criminal?

MR. WAKEFIELD: Well, I don't know.

SENATOR O'SULLIVAN: I am trying to figure out. I haven't seen anything here that I would consider criminal other than these things.

MR. WAKEFIELD: Obviously, I don't think we would want to make it a felony for a friend to suggest to a prospective mother that the Joneses would make fine adoptive parents.

SENATOR O'SULLIVAN: Does the statute do that? You have to prove the element that, first, the purpose is of adoption; second, that the party received money, services, or anything of value; third, that they either found or that they procured or that they referred or placed a child for adoption.

MR. WAKEFIELD: All right. Well, getting down to that case, has the person who has referred the parent found the home for adoption? Now, we would debate that at length, I think. But if you say --

SENATOR O'SULLIVAN: Well, now, that is the second section.

MR. WAKEFIELD: If you say "in connection with" --

SENATOR O'SULLIVAN: That is another portion of the section.

MR. WAKEFIELD: -- the finding, I think we would probably agree that what that person had done was in connection with the finding of that home.

SENATOR O'SULLIVAN: I don't think I get your thought there. What was it again, now?

MR. WAKEFIELD: Well, if the crime consists of



finding, placing, procuring the child or a home for a child --

SENATOR O'SULLIVAN: Referring.

MR. WAKEFIELD: Referring. Then referring may cover our particular situation. If it is limited to finding, then I doubt whether we have --

SENATOR O'SULLIVAN: That is why I have included referring. You don't have to find. Just refer. A complete act would be place, wouldn't it?

MR. WAKEFIELD: Yes.

SENATOR O'SULLIVAN: All right.

MR. WAKEFIELD: The things that we are talking about, really, constitute an effort to define some of the elements that go into placing; that is, the finding, procuring, referring are really parts of the elements that go into placing the child.

SENATOR O'SULLIVAN: No, no. My statute, I refer to the referring for hire, without the placing.

MR. WAKEFIELD: Fine.

SENATOR O'SULLIVAN: Is a crime. And the procuring, without the reference - the procuring without the reference - is a crime. You start with, you have a broad crime, the placing, the complete act that we have been talking about; referring for hire is another separate crime here, and the procuring. Doesn't this cover all your situations, or is there another situation we haven't covered? I go to the second section, or the second portion of it, where he refers a parent, or, for money, services, or thing of value, procures or refers a parent for purposes of adoption, is guilty of a felony. Doesn't that cover all your four situations that you are worried about?

MR. WAKEFIELD: Well, in effect what you would suggest is that we drop out "in connection with" insofar as the act is concerned?

SENATOR O'SULLIVAN: It is too vague for a criminal



statute. First of all, it seems to me that when you prosecute a vague statute, even if they are legal, they make it rather difficult to prosecute because often times the jury is not convinced. I mean, I have that impression with reference to "in connection with".

MR. WAKEFIELD: I am sure that is true.

SENATOR O'SULLIVAN: I think that is what you have in these cases here. I would suspect that is what you have in these cases here. It is too tenuous.

MR. WAKEFIELD: It is too tenuous in light of the act that was prohibited by the statute, whatever it is.

SENATOR O'SULLIVAN: You get the same thing in the poppy cases, where you say anyone who cultivates the poppy. And this is pretty clear. Then you can define "cultivate", and even though, perhaps, there is nothing let us say, nothing very, in itself, immoral about turning a hose on a bunch of poppies, yet you have this type of statute where, in order to enforce the whole thing, you have to make it a crime to do one of the simple things and I think that is what you have to do here if you want to get enforcement out of it.

The felony provision bothers me a little bit because you have a field here where you haven't obtained a single conviction yet. It seems to me it is kind of hard to start with a felony with the jurors, probably, the jury list in the mind that they are. Let me read you that statute and see, doesn't that contain all the elements of what you have here? Wouldn't this catch everything?

MR. WAKEFIELD: Senator, I would like to say yes, but I am not sure as I sit here. I would like to take the proposal back to our people, who are perhaps more expert in the field than I, and get their advise with reference to it. That I will be pleased to do.

SENATOR CHRISTENSEN: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: One thought I am still attempting to clarify.

As I understand it today, Section 224q, that is the placement statute, has been successfully defended against the charge that it is vague and unconstitutional? It is still on the books. It hasn't been declared invalid?

MR. WAKEFIELD: No, sir. There has been no --

SENATOR CHRISTENSEN: The only thing that has happened is that they have been found not guilty of violating it.

MR. WAKEFIELD: -- judicial proceeding. That is correct.

SENATOR CHRISTENSEN: Throughout the law, as you know, in those situations, sometimes we have by statute raised presumption as, in other words, rules of evidence. What would your comment be in the event that we had a statute framed in such a way that the receipt of any consideration, other than for legitimate, legal services, the reasonable value of legal services and medical services, would raise a presumption that it was deemed received for placement in violation of the statute?

MR. WAKEFIELD: I would think that would help. Now, again, we are dealing with the problem of definition, and if we can spell out with particularity enough of the fringe activities that should raise that presumption, then I think we would be making real progress toward the solution of the problem.

SENATOR CHRISTENSEN: This would be directed more to a practical problem of proof than anything else.

MR. WAKEFIELD: That's right. And it would also constitute, in a sense, some definition of what the Legislature intended by "placement".

In other words, if you had a series of presumptions

that this, this, this constitute acts in connection with placement.

SENATOR CHRISTENSEN: I am just talking about one presumption, that is what has been brought out here, that apparently we have \$3000 charged, or exacted, under some circumstances for which a legitimate charge might be considerably less.

MR. WAKEFIELD: I think the proposal has been made, we have perhaps a series of presumptions, four or five that deal with specific aspects of the problem of placement, and any one of which might give rise to a presumption that a placement has occurred, of which the one you mention is one.

SENATOR CHRISTENSEN: There is nothing in the statute today which mentions profit whatsoever.

MR. WAKEFIELD: That is correct.

SENATOR CHRISTENSEN: Your thought here was if we inject this element of profit, then we have somehow defined the crime which we have in mind, that is, the taking of money or profit in connection with a placement?

MR. WAKEFIELD: That is correct. With the addition of some things which we conceive to be really a part of the act of placement, which are also prohibited, simply as a guideline to the individual, to know that he cannot do this thing, regardless of whether he thinks --

SENATOR CHRISTENSEN: For half an hour we have been talking about what placement means by some of these fringe definitions.

MR. WAKEFIELD: Yes, that is correct.

SENATOR CHRISTENSEN: As a practical matter, I can find a great difficulty with any jury finding out what placement means where it will be further complicated if you attempt to find that placement means something other than or in addition to referring, finding or procuring. But I merely suggest



to you the problem, approaching it from the standpoint of a rule of evidence, or of proof, as distinguished from that of the definition of the crime.

MR. WAKEFIELD: I am sure that the proposal that you suggest will be made to the Committee by some of the people that follow. I think a similar proposal was submitted to the Assembly Interim Committee on Judiciary in San Francisco some month or so ago.

SENATOR O'SULLIVAN: I have one further question. Earlier today I suggested that we make the legal fees subject to approval by the court in these adoption proceedings, and that the fee be approved by the courts only upon a finding of reasonableness.

Would you go along with that proposition?

MR. WAKEFIELD: Yes, sir.

SENATOR O'SULLIVAN: I don't know what we would do about the physicians' fees. Do you think that we should do that, too?

Normally a court doesn't pass on the reasonableness of physicians' fees, although in certain instances they do in cases.

MR. WAKEFIELD: I don't know how you would control that, Senator, simply because the court has no jurisdiction over it.

SENATOR O'SULLIVAN: That is true.

MR. WAKEFIELD: In the normal case.

SENATOR O'SULLIVAN: That is true.

MR. WAKEFIELD: The doctor is not --

SENATOR O'SULLIVAN: Yes, they wouldn't have that.

MR. WAKEFIELD: -- involved in any way, the court has no jurisdiction over him in amounts to set.

SENATOR O'SULLIVAN: Yes, but what about the

jurisdiction of the doctor? You have the attorney. You always do.

SENATOR CHRISTENSEN: My thought was that the conduct that you are seeking to prohibit, or to punish, is that which is done at the time of the finding, placement or procuring or referral, not at the time someone decides whether it is reasonable or not, or whether even the court has power to do so would be incumbent upon the person who does the act to take the risk that it would later on be found in a prosecution to be reasonable or unreasonable.

In other words, the particular doctor or lawyer, in making the arrangements or the charge, would be confronted with the knowledge that he would commit a crime if he was charged for anything other than his legitimate professional services.

MR. WAKEFIELD: Well, there are some obvious problems in that suggestion, I think, which would be objectionable both to doctors and attorneys in general, Senator, because actually what you are doing is then drafting an after the fact determination and making that after the fact determination criminal when the doctor or the lawyer thought in good faith at the time that he was doing it that he was making a reasonable charge for the service. You are taking somebody else's subsequent judgment as to the reasonableness of what he himself thought was reasonable.

SENATOR CHRISTENSEN: You would be taking the jury's determination in a criminal case as opposed from a finding of the court in the adoption proceedings.

MR. WAKEFIELD: Well, that is true. That is why we have criminal courts, actually, to determine those matters. But to predicate it upon the basis of reasonableness, I think, would not work.

CHAIRMAN RATTIGAN: Any further questions? Thank you, Mr. Wakefield.

MR. WAKEFIELD: Thank you, gentlemen. I am sorry to have taken so much of the Committee's time on a busy afternoon.

CHAIRMAN RATTIGAN: Your written statement will be incorporated in the record.

Mr. Wedemeyer? Will you identify yourself for the record, please?

MR. J. M. WEDEMEYER: Gentlemen, I am Jack Wedemeyer, Director of Social Welfare in the State of California.

CHAIRMAN RATTIGAN: Before you begin, Mr. Wedemeyer, we are running very much behind time. If you have a lengthy written statement, without attempting to preclude you in any way, is there any way you could go through it somewhat faster than reading it verbatim?

MR. WEDEMEYER: Yes, sir. Yes, sir. I will, since you had it already, simply comment on some of the points that are involved and confine myself otherwise to your questions.

I suppose I ought to start by identifying my interest and concern in this subject as being primarily that of administrator trying to help a staff operate in an area where the job and the responsibility is not too well spelled out by the law, and where there are a good many uncertainties, as you have seen in previous testimony, about the role that the Department and its workers should play. I appreciate this opportunity to share our views and our information on these problems with you, particularly around the problems that you identified for discussion.

The importance of the subject in this state is underscored by the fact that the 12,000 adoptions completed in this state last year represent more than a tenth of all the adoptions completed in the United States.



The California law has always recognized and defended the right of the natural parent to make her own placement of the child, and I think on this point perhaps I should make some comment.

As I understand the background of this law, and some of the questions that have come before you, we are in a difficulty because there is a long area between two things which the law attempted to do. It attempted, in the first place, to preserve this right of the natural parent to make the placement of her own child and, second, it attempted, when she was not able to exercise that right, to establish a public service, or at least a public-sanctioned service, which had the capacity to take the responsibility for the child and to arrange a home for it.

Now, the questions arise in the area between those two things, as it has been referred to in previous hearings. There is a grey area in which a black market operates here, supposedly. And it is at the extremes of that intermediate area that we are primarily concerned.

A sound program provides protection for all the parties involved: The child, the parents, both natural and adoptive. And it requires a rather complex working relationship between several of the helping professions. Noteable among these are the requirements for legal service, the requirements for social service, and because of the kind of situation in which this goes on, a considerable requirement for medical care and it is because of these that we find ourselves involved often.

In addition, there may be other professions that may be involved, those professions which spend a good deal of time counseling with people in trouble.

Now, I am not going to elaborate on the agency program particularly, other than to point out to you that as

far as this program is concerned, the agency program, the Department has consistently, over the last several years, attempted to expand and improve the services available to mothers to whom they can turn in times of trouble. We have attempted to improve the existing services which include assistance with living arrangements, with financial aid, a broadened medical program for both private medical and hospital care to cover those presently not eligible due to marital status; the use of protective wage homes, and so on and so forth.

We have attempted to expand and improve the agency facilities for giving service, including consistent improvement in personnel engaged in operating these agencies.

We have attempted to improve it by increasing the possibilities of placement of children on a statewide basis through more effective exchange of information, and through the number of agencies. There are now about 30 of these agencies, 10 private and 20 public, throughout the state. It is not likely that the number of adopting agencies can be very rapidly expanded in the immediate future along the lines that we have been attempting, and I would like to comment a little more on this later.

The basic rights of the parents to custody and control of the children, since you asked for an evaluation of the proceedings, of the parent placement type of adoption, the basic rights to the parents' custody and control of children born to them, and their responsibility for them, have been recognized in the adoption law. The parents who give up a child for adoption have two choices essentially: They can either relinquish him, place him with the licensed adoption agency, or they may place the child themselves with persons whom they select.

The second method by which the parents select the

adopting parent and makes the placement directly is provided for in the parent placement, or so-called independent process.

The State Department of Social Welfare, or the adoption agency to which we have delegated that responsibility, enters the situation when the petition for adoption is filed, and this is ordinarily after the child is born, usually after the placement is made, since there is a petition on file and far too late to give the kind of service that can be given in an agency adoption program.

This is part of the reason for some of the difficulties and uncertainties about facts in this area, because you come in so long after the fact that we are dealing with accomplished deeds rather than things that are prospective.

The help, therefore, that we can give a child is limited. Unless there are very obvious factors that make a couple unsuitable to adopt a child, the courts are reluctant to deny an adoption and order removal of the child. For that reason, unless there are tangible factors on which the Department can base a recommendation for denial, unless the situation is really very damaging to the child, the probabilities are that the recommendation will be approval. The result is that while few children are permitted to remain in bad homes, some do remain in mediocre or questionable homes.

Studies that have been made on this subject in other states indicate that about 46 percent of the homes in which children are placed ostensibly by parents turn out to be good homes; 24 percent considered fair; and 30 poor.

Now, we feel that probably these figures are pretty indicative in those states like ours which use this procedure.

The heat and emotion that develops around parent placements stems largely from two sources: From adopting parents



who wish to get the same protections as those which are possible when an agency makes the placement, and from intermediaries who get active in arranging the placement.

By law, as I see it, and I am no lawyer, the law is based on the idea that a parent cannot turn over to an unlicensed agency or individual her responsibilities for the child. She may seek advice and help from her physician or attorney or minister, but she can't transfer to them the right to act as her agent in finding or placing the child.

It seems to me that when a parent turns over such a responsibility to an unsanctioned or unlicensed agency that this is tantamount to abandonment of the child and that it is entitled to have the protection that is given either by custody of a court of custody in a legally approved agency.

In the meantime, opinions range, of course, and there is quite an extreme range of opinions in the matter. Certain facts, I think, have to be recognized in considering them and their place in the adoption program.

This is in relation to intermediaries. First of all, I think there should be no question that placements made by parents are entirely legal. Adoptions resulting from parent placements, whether made legally or illegally, if they are properly completed and all the statutory provisions are met, are and should be valid. From the standpoint of the welfare of the child, some parent placements are good, some fair, some poor, and some very bad. All placements by parents are not good. All placements through intermediaries, on the other hand, are not bad. There is always a place for the parent placements, but there are hazards that are inherent in this process and that affect the natural parents.

I will let you read some of this for yourselves.

We think that our experience is about the same

as that in states where they have extended studies, and the problem lies if, as you asked earlier, we are committed to retention of the rights of the parents to place, how far can we go in sanctioning the kinds of activities that go on between the two extremes.

You have asked whether the parent placement proceedings should be retained. Dr. tenBroek gave you an answer, and I would like to state for you the position of the State Department and the State Social Welfare Board as follows:

This statement was made on December 16, 1960. Both the State Board and the State Department reaffirm their belief in the right of natural parents to make direct independent adoption placements, and this right is expressly provided in California law. State law prohibits placement by anyone other than the natural parent or licensed agencies.

By no means does the state wish to prohibit natural parents from making placements independently, nor do we seek the requirement that all adoptions go through a licensed agency. Independent adoptions have a vital place in our society.

The concern of the Board and the Department about the activities of the intermediaries was also included in this statement as follows:

The State Department recently completed a year long study of independent adoptions. This investigation uncovered illegal activities by intermediaries acting as baby brokers - placing babies for profit.

The state will not tolerate the commercialized exploitation of babies by a handful of individuals in various parts of the state. Both natural and adoptive parents have a right to safeguards of law and to protection from coercion and exorbitant costs.

I think this sets forth our belief that there

should be a protection of the parental right to place a child in independent proceedings.

You asked also whether the attorney, the physician in private practice, who are frequently confronted with factual situations involving children who are adoptable, and who may be released for adoption, you asked what we conceive the role of the practitioner to be; under existing law, what may and should he do; what does present law prohibit him from doing; state whether and how the law should be changed in these respects.

Placement is a process which consists of a series of steps, which has been brought out here, covering the total arrangements made by the parent that separates the child from the mother and provides him with new parents. It may involve the finding and selecting of a prospective adoptive family, securing and giving information on which a responsible decision can be reached, agreeing upon a specific plan, effecting a transfer of the child by moving him into a new family and involving direct negotiations between the parent and the persons wishing to adopt the child.

We recognize fully that legal and medical services are indispensable parts of the process, and this is what accounts for many attorneys and physicians being involved. Most of the persons who function as intermediaries are only on a well intentioned and seldom repentative basis, but at the other extreme are the kind of cases that you have heard described today.

The physician's role includes meeting the immediate needs of all persons involved. This includes providing maternity care to the natural mother, as well as medical care for other conditions requiring treatment. For the child, the physician provides diagnostic appraisal and needed medical treatment. For the adoptive parents, he makes a determination of their



health status and aids in overcoming problems of sterility. In addition, he may occasionally give his patients advice on adoption and information about the services that are available through social agencies.

The attorney's role in adoptions is a very important one, since no adoption can be secure unless the legal rights of all are safeguarded. The attorney has a responsibility for giving legal advice and counsel to the adoptive parents of their rights and responsibilities in taking a child for adoption. He prepares the legal documents and represents his clients in the legal proceedings needed to complete it. He may also advise his clients regarding adoption and give information about services that are available through agencies.

The natural parent, too, may need legal representation and service to understand his legal rights and the legal consequences of giving up a child.

Now, I have earlier mentioned the role of the social worker in the parent placement. The present law provides an opportunity for all the professions to contribute to adoption, and we think that there should be no categorical change in this respect.

You asked also whether physicians and attorneys should be exempted from licensing requirements in connection with the placement of children for adoption. We stated our belief that they should not be exempt from licensing requirements in connection with the placement of children for adoption when the legislation was introduced in 1955, and that legislation did not pass.

In this, I think the question is if you accept one, why not others, and where do you draw the line if you don't have a fully responsible agency to which you can turn over the care of the child?

The concern of the Legislature for providing protection for the children being separated from their own families has been expressed through the provisions for the licensing of agencies, and this is not a new provision. It was first adopted in 1903, and repeatedly since then the legislature has said that children who are deprived of parental care are the community responsibility and the community must see to it that only parents and organizations directly accountable to governmental agencies shall engage in placing.

Now, I think one of the problems that we have, you raised it awhile ago in your comment in connection with this, is the role of the professions themselves. In a number of places the professions have stated their opinions very positively on one or another of these points.

In July, 1961, in an issue of "Patterns of Disease", published by Parke, Davis and Company, physicians were asked to reply to a series of questions about adoption. One question asked was, "What, in your opinion, should be the principal role of the physician in adoption?"

Information was compiled from the first 5,166 questionnaires received.

The report of the survey was recently released. Only 16 percent of the physicians replied that they thought their role was to arrange the adoptions. 84 percent stated that adoptions should be handled by social agencies and saw their role as referral to a recognized adoption service.

In general, I think this is the attitude of the profession as a whole in adoption matters. They do not get involved routinely or consider that they have any major role in the adoption itself.

You asked also, do you believe that the penalty for violating Section 1620 should be increased.

We recommend that the penalty for violating this section should be increased. We have found from our experience that prosecution of the few individuals who engage in this matter for profit is most difficult under the present provisions. Misdemeanors are difficult to convict on. There isn't much interest, the penalty is not large, so I think we are plagued with a lack of concern, lack of interest in prosecutions under this sort of thing.

We sponsored legislation, as you know, under which there would have been a new section added to the law stating that no person or agency except a licensed adoption agency should request, receive, accept pay, or give any compensation or anything of value in connection with finding or offering to find a child, procuring or arranging or holding himself as able to arrange for the adoption of a child, recruiting, soliciting, or maintaining a list of individuals interested in adopting a child.

Now, under this provision, which is one of the bills that you are concerned with, the violation would have been a reducible felony providing for imprisonment or fine or both.

This, however, should not be considered without reference to your other question as to whether or not we believe that the term "placement" should be clarified by law.

Again here it seems to me that this is a difficult thing to do, but it seems to me we have no alternative to spelling this out to some extent, unless we want to put ourselves in the position of, in effect, barring, putting a very substantial bar in every activity connected with parent placements by any other person.

I think it will be difficult to spell it out, but it does seem to me that there should be added to Civil Code Section 224q and in the Welfare and Institutions Code 1620 some wording that prohibits certain kinds of things.



Now, you can do this in several ways, such as has been suggested here, adding the words "finding or selecting the prospective adoptive family; participating in the placement of any child for adoption."

But it seems to me that the one that would be a little better than either of these would be wording which goes to the arranging, negotiating or acting as intermediary for the parent in adoptive placement of a child.

Now, this, in combination with the penalties for violation, the provisions which were suggested prohibiting the exchange of things of value in accounting to the court of all moneys paid in connection with an adoption might serve to deter those who engage in large scale questionable types of activity.

I know that these are still vague words. They are a little more definite than the present law which simply refers to placement. I don't know whether you can ever define all the kinds of things that get involved in this and do it so that you do not create some hardships.

At any rate, this is indicative of the kind of thing, more indicative than the word "placement", which should be prohibited.

I was much interested in the modified approach to this, which was suggested by Mr. Sloss before the Assembly Committee for the Judiciary on November 1st at the hearing in San Francisco. I believe that he is going to present this suggestion to you, and I believe it should be further explored as a means for working around an expanded definition of, well, more precise definition of prohibited acts than "placement" alone.

We believe also that the law should provide for disclosure of all disbursements in connection with an adoption. Now, I am not sure that this is a basis for specific proceedings

against a person. But it is one way of getting information about what goes on that we do not now have. It would allow the court, perhaps to a greater degree than is now possible, to protect adopting families from exploitation and excessive costs. It would provide the opportunity to secure information on any questionable cost; and again in reference to your question of this use of the word, earlier this afternoon, I would say "costs", we should be more precise than this. It would be costs which are entailed in any of these findings, connected with the finding rather than the legal services as such; costs connected with payment of third or fourth parties for their services; this sort of thing. It would give you some opportunity to decide whether or not they were questionable, or the court an opportunity to decide whether they were questionable.

In other words, make more explicit the purposes for which the money is being expended.

Finally, it would build up a body of facts about charges which could be further investigated, and perhaps would lend a base for further proceedings against the person, or for further modifications of the law, if that seemed indicated.

Now, Dr. tenBroek has already given you, he and Mrs. Kuplan, the information which we have which does not pretend to be an all-inclusive investigation of practices throughout the state. Pretty well, I think, you know what this represents, and why we have felt that these things are needed.

Now, I would like to recommend - well, let me just summarize briefly.

We recommend, then, adding a section to the law relative to the exchange of anything of value in connection with an adoption, make it a violation of this section, a reducible felony.

We call attention to the suggestion by Mr. Frank Gloss of setting up a series of presumptions which I believe should be considered.

And third, we would like to propose a change in the law to provide for full disclosure of all disbursements in connection with an adoption.

I would recommend two other changes: First of all, the Department itself, the State Department of Social Welfare, should be permitted to set up and administer an agency adoption program on a regional basis.

Under the present circumstances, a County Board of Supervisors must request a license to establish a public adoption agency. Most counties are too small to make it administratively feasible to establish and staff a proper adoption agency.

In order to extend agency services throughout the state, I believe the State Department should directly administer an agency adoption service, perhaps under contract with local bodies, or some other way, when this is not feasible on the local level.

I don't think that in any other way agency adoption services can be effectively brought to the approximately 40 counties of this state that would have trouble staffing and ~~manring~~ manning an adoption service for themselves.

Second, it is conceivable under the present law that parties to a parent placement who fear an unfavorable report can forego the adoption action in an attempt to transfer the child by guardianship proceedings in California or instituting proceedings in another state.

Now, we believe that the law should be broadened to require the county clerks to notify the State Department of any custody action filed, when it involves a child who is



also the subject of an adoption petition. By virtue of these notifications, the State Department and the adoption court would make available to the other court any information which might be pertinent to the plans for the child and his custody.

Now, you may wish to consider in this connection whether the law should go a little farther and require some sort of investigations done by a social agency in such situations as is done, perhaps, in other states.

I would like to point out to you that there is specific wording in some of the other statutes, the statutes of other states. I am not sure how well they would work here.

For instance, in Dr. tenBroek's document you will find immediately following Page 46 the specific wording of the New York Penal Law having to do with this, and it gets to some of the questions that were asked earlier.

One further bit of information I would like to pass on, though it is not in the written testimony at this point. There have, but in view of the questions raised about efforts to work through the associations, the professional associations, there have been a number of recommendations made in various times such as the establishment of official committees of three professions should be established by law or departmental order to bring about a closer cooperative relationship in the planning and in adopting rules, regulations, and standards for adoption practices. This has been made.

Another suggestion: The Michigan State Bar Association, State Bar of Michigan, in Ethics Opinion Number 156, adopted a finding in this which had to do with conflicting interests. Lawyers may not ethically represent both of the natural parents. Lawyers may not act as brokers or middlemen or child placement agencies in connection with the adoption of children.

You will find similar provisions in statements by the Cleveland Bar Association, a number of others. I simply call these to your attention. They can be identified further, if you wish it, as to expressions that professional bodies have made which go to this general subject. I am not aware of the extent to which similar expressions have been adopted at this point by the associations in our state. Generally, they go along the same line, where they have been adopted, and I think probably they represent not the majority of states, but some of those who have been heavily involved in questions about adoption practices.

CHAIRMAN RATTIGAN: Mr. Wedemeyer, one question that recurs in this matter which I think should appropriately be directed to you. The law, of course, does not prohibit placement. It prohibits placement by any person, corporation, or association now having a license to do so, and reference has been made at this hearing and otherwise to the number of public and private agencies so licensed. And the code is relatively silent on what is involved in the licensing proceeding, and I don't know of any legislative standard as to who shall be licensed and who shall not be.

I do know that those who are licensed are either public agencies, counties, or private groups of people who are engaged in this function by reason of a charitable interest, so to speak.

Is there anything to prevent an individual from obtaining a license?

MR. WEDEMEYER: There is not now in the present law.

CHAIRMAN RATTIGAN: Is there anything in the policy of the Department which would now prevent an individual applicant from being licensed?

MR. WEDEMEYER: The Department's standards, as they stand now, are directed primarily to agencies. Now, while the law has not provided standards, the Department, of course, to license, has established standards. Usually those go to a number of things: What are the kinds of personnel, the kinds of services that are available, what are the kinds of resources, is the agency in a position to act responsibly, can they take responsibility for the care of a child for this long a period of time if things go wrong?

They are, in theory, responsible for this under law. They go to the organization of services, as well as standards for how they shall operate, conduct their affairs.

Now, provided that individuals could meet these, I presume they could be licensed under the present law.

The Department has never undertaken the job of drafting any set of standards that would need to apply to a licensed individual. The major obstacle, I think, is the second one that I mentioned, the way that an individual could establish that he could be fully responsible for the care of that child should something go wrong.

CHAIRMAN RATTIGAN: Is it conceivable that an individual could be licensed to place or to participate in the placement of children who could not be responsible for the custody, the physical custody and maintenance of the child between relinquishment and placement as a licensed agency is now? But I am talking about licensing a person just to serve as an intermediary in the familiar independent adoption pattern.

MR. WEDEMEYER: I suppose it is conceivable. I think this would take some consideration of the law. I think it would be a somewhat hazardous occupation.

CHAIRMAN RATTIGAN: Not possibly less hazardous than the practice of law now.





SENATOR CHRISTENSEN: I don't know whether you asked him the question. I think he referred to it. You referred to the question of the professional societies themselves. Do you think it would be possible or advantageous for the Legislature to consider amendments of either the Medical Practice Act or the State Bar Act to cover the conduct of the doctors and lawyers who have been referred to here today? Not the particular individuals, but anyone, as a method of control in adoption cases particularly?

MR. WEDEMEYER: Well, I don't know. I think that the professions without that could, if they would, adopt statements of principle on this which would be used as a base for disciplining members.

SENATOR CHRISTENSEN: There has been some testimony that these matters have been brought to the attention of both local associations down here, and apparently nothing substantial has been accomplished. Of course, the State Bar Act and the Medical Practice Act is subject to some kind of control by the Legislature.

MR. WEDEMEYER: Well, I think the thing that has been the basis for nothing happening is the lack of any positive statements in what is considered ethical in this field rather than anything else.

SENATOR CHRISTENSEN: Well, the Legislature, the State has control, obviously, over the professions.

MR. WEDEMEYER: Yes. Yes. Well, what I am trying to say is that this would certainly be one way into the situation. Whether we are ready for this kind of step yet, I think, is the question I am raising, whether the associations themselves might do more before such a step was taken.

SENATOR CHRISTENSEN: I mean in our attempted definition of the crime, attempt to have the crime apply to

any person, licensed or otherwise, professional or otherwise, who engages in a prohibited conduct, but apparently it seems to be confined to doctors and lawyers, at least insofar as some of the examples that have been given here today.

MR. WEDEMEYER: Well, as I have said, these are the people who give the kind of service that most frequently gets them involved. A friend is a friend of a particular person and usually this happens once, and the service, whatever is done is done that once. But that approach, if that were the only one that were taken, would leave an area of at least theoretical non-coverage in which people would operate.

SENATOR CHRISTENSEN: The Department has no recommendations to make one way or another, then, with regard to this question?

MR. WEDEMEYER: I think not at this point, of legislation on that score. We would like to see the associations with a positive policy with respect to this. That I think, on the basis of this, would give us more definite means to move if we need it.

CHAIRMAN RATTIGAN: Any further questions from the Subcommittee? Mr. Wedemeyer, just clarify something, would you look at Page 6 of your statement?

MR. WEDEMEYER: Yes.

CHAIRMAN RATTIGAN: You refer down after the enumerated paragraphs, to "A study not yet published made in another state in 1960 evaluated 436 homes," and then they are categorized as good, fair and poor. And it is footnoted, "Patterns of disease, October 1961, Parke, Davis & Co."

Is that the source of that finding, a pharmacy house publication?

I mean, if it is, that is fine.

MR. WEDEMEYER: This quotation may have been



taken from that document. Actually, there have been studies of this made in two places, Connecticut, I believe. Yes, Connecticut and Florida. One of these, in addition to this one, the findings are, I think, quoted, they are in pretty parallel if they are not in exact quotation. The Connecticut study of which we have some summary under date of 11-30-61, received from the former Clinic of Child Development, Yale University School of Medicine, 1951, this was independent. They took 200 placements for adoption, 100 independent and 100 agency, and in their rating of them found 46 goods, among the independents; 76 agency; 26 questionable compared to 16; 28 bad as compared to 8.

The Florida adoption study, which we have received preliminary information on, shows 46 percent good, 25 percent fairly good to questionable, and 29 percent poor.

I believe the reference that was made on the source from which we quoted this was to the Florida study which is, as yet, to my knowledge, not a published study.

CHAIRMAN RATTIGAN: In the studies in question, who made the evaluations as to good, fair or poor?

MR. WEDEMEYER: In the Connecticut, I don't have the full detail of this. I have the basis which they gave in making decisions, the following information was used. I imagine this was applied by staff members or people working under the Clinic of Child Development.

Judgment regarding the child was based on clinic development studies. Judgment regarding adoptive homes was from the social worker's evaluation at the time of placement. Criteria used for families considered good, a reasonable modicum of security and stability, a happy home life, a decent upbringing. Criteria considered to make the home unsuitable, unstable marriage and broken home, unstable mental health

factors in either parent, prison, wife beating, drug addiction, alcoholism, and so on.

CHAIRMAN RATTIGAN: Does the study make the same findings with reference to 476 agency adoptive homes?

MR. WEDEMEYER: This one, this is the Connecticut study.

CHAIRMAN RATTIGAN: I am referring to the one quoted or paraphrased in your written statement, Page 6.

MR. WEDEMEYER: The adoption -- the Florida study?

CHAIRMAN RATTIGAN: Is that Florida?

MR. WEDEMEYER: May I defer to a staff member on this one?

CHAIRMAN RATTIGAN: Please.

MRS. KUPLAN: I don't believe so. This was just on independents.

MR. WEDEMEYER: This was just a review on independents, apparently, on this one. It was not a comparative study. 438 homes --

CHAIRMAN RATTIGAN: I am wondering if the same clinical evaluators evaluated 436 homes with natural children.

MR. WEDEMEYER: I don't believe that they did in this particular study.

CHAIRMAN RATTIGAN: It is pretty much the luck of the draw there, isn't it?

MR. WEDEMEYER: Well, I suppose it could be.

CHAIRMAN RATTIGAN: You wind up good, fair or poor, and that is the story of mankind. So the Florida study doesn't prove anything, does it, except that some people were kept busy and they could count.

MR. WEDEMEYER: Well, this was an evaluation of some of their work. That is all I can say. It wasn't a

comparative one.

CHAIRMAN RATTIGAN: All right, thank you. Any questions from the Subcommittee? Thank you very much, Mr. Wedemeyer.

MR. WEDEMEYER: Thank you, sir. We will be glad in any way we can to elaborate on any information that has been given to you.

CHAIRMAN RATTIGAN: We may call on the Department at a later date to help us run down some of the collateral material.

MR. WEDEMEYER: Yes, sir, we will be very happy to do that.

CHAIRMAN RATTIGAN: Mrs. Eldon Schafer.

MRS. ELDON SCHAFER: How long do you want me to talk, since you are already half an hour behind?

CHAIRMAN RATTIGAN: Well, we have devoted more time than we scheduled to the four witnesses preceding you because all of them represented public agencies of one or another kind and had rather extensive presentations. Yours, in writing, is also comprehensive, and, since we are running now beyond the usual hour of adjournment, I wonder if we could ask you to skim through it, if that's the proper word? We don't want to curtail you in any way.

I, for one, am personally acquainted with your interest in this field. I certainly want to hear from you. But if you read the whole statement, it will take us well past the hour of adjournment, not to say tolerance.

MRS. SCHAFER: Fine. I was just wondering how much, you know, I should cut.

CHAIRMAN RATTIGAN: Why don't we start off and shoot for 10 or 15 minutes and see how we make out?

MRS. SCHAFER: Fine.

I would like to say that I am speaking here



today for the Adopted Children's Association of which I am Legislative Chairman, and in case any of you gentlemen are not familiar with what ACA is, we are a thirteen year old organization of primarily adopting parents, with about 50 percent of our adoptions in the field of agency adoption and about half of them independent adoptions.

Therefore, things that we do as an organization, I think, can fairly be said not to be biased, because we are not oriented to either the agency approach or the independent approach. We are very interested in adoptions as adoptive parents and as people who have attempted to make a study of adoption legislation during the past several years.

ACA has, throughout its history, taken a very deep interest in legislation and has, I think, been effective in Sacramento in getting a lot of the important parts of our existing statutes passed.

And I think that you all know that we have pending in the Assembly Interim Committee our A.B. 1951, which is an extremely comprehensive, almost total recodification of the adoption law. If, by any chance, you do not have it available to the Committee, copies of the Bill as it was amended, and as it is before the Assembly Committee, I do have some copies with me today.

As Senator Rattigan pointed out, we have in our written statement, which I assume you all have before you, attempted to answer the nine questions which you presented to those who were asked to testify. I won't attempt to go through all of those answers. I would like to say that where most of the witnesses you have heard today seem to feel that Question 8 was the area that they wished to dwell on, our answer in response to Question 8 is that we are not as a group aware nor do we have specific knowledge of actual cases of illegal or

improper placement of children for adoption. So we won't burden you on that subject.

I would like to go a little bit into our discussion of Question 9: "What suggestions do you have for desirable changes in the law of adoptions generally?"

I am sure that you are all aware that there is no natural law of adoptions, and I hope that you are as fully aware that there is no real difference between the emotional ties of natural parents and their natural children and adopted parents and their adopted children because, unless you can fully accept this fact, I believe that you are not truly able to accept what adoption means to all parties to an adoption and, therefore, perhaps, full knowledge of what adoption means is necessary to your really being able to evaluate all of these things so far as, particularly, adopting parents are concerned.

The Legislature and the Legislature alone has the right and the responsibility to make adoptions good for society and for the men, women and children whose happiness is dependent upon the laws concerning adoption. The Appellate Court in its 1950 decision in the case of *Ex Parte Barents* phrased it well when it stated that "The matter of adoption and the procedure under which it must be accomplished are entirely statutory and have never been a part of the Constitutional jurisdiction given to courts."

It is my belief and the belief of ACA that legislation concerning adoption procedure is an area where we cannot afford to leave any avoidable area from its interpretation.

Adoption statutes must be specific as to purpose, procedures and effect. It should not be possible for the State Department of Social Welfare, through the State Board of Social Welfare, to go beyond the specific wording of the law and its

interpretation of the intent of the law.

It is our opinion that existing California statutes governing adoption can almost without exception be improved as to form, clarification of intent, improvement of basic procedures, and specifications of implementing procedures.

Much of our present law was formulated between 1872 and 1911. Roots of modern procedure were established in 1927 and clarified in 1931. Subsequent revisions of the Civil Code as it pertains to adoption have amended a not-too-well-written basic law into a veritable patchwork. Existing law does not even discuss a procedure called independent adoption; five lines of statutory exclusions substitute for this simple term whenever it is needed.

The Legislative Committee of the Adopted Children's Association determined that the time had come for a total consideration of all aspects of California adoption statutes.

AB 1951 was the result of the work of that committee, working wherever possible in conjunction with authorities in every phase of adoption.

It is our hope that if you have not already had an opportunity to do so, you will, during your interim study, find the opportunity to study AB 1951. It does not, as was stated in the material sent out by the Department of Social Welfare after the session had closed, it does not include any provisions for interlocutory decree. All the parts of the legislation which dealt with an interlocutory decree were amended out in April by the Assembly Committee before it was sent to the Interim Study.

We will, if you would like, make available to you a resume of the details of this law, but I am sure that your own Legislative counsels are far abler to do this than we



are.

I would like to, if I may, just numerically go over a few of the more important proposals which are included in AB 1951, many of which have been touched upon by the other speakers today and almost all of which are included in some form or another in other legislation before the various committees. These are the basic proposals, and I think you would say that these proposals are primarily the things that ACA would be interested in a revision of adoption statutes in California.

A statement of purpose: This may seem simple, but there is nothing in that law that says specifically what it aims at. The existing law, I am speaking of.

A definition of terms. This is a very important feature that is lacking in the existing law, and ACA would go beyond our own legislation and define some additional terms, I think, at this point. But I think it is tremendously important that these things -- we have talked all day about placement, and who knows what placement is? This is one of many of the terms which are used constantly by the people in the adoption field and about which there is very real misunderstanding.

I note in your own questions where, obviously, you intend to say consent and you say relinquishment in your own questions to the witnesses of this Committee. There are a great many of these things which I think need to be clarified by a definition of terms.

There is a requirement that an independent adoption petition be filed within 15 days of physical surrender of a child for physical adoption, or 15 days after a child is brought into the State for adoption.

Petitioners are required to give notice to the court of the whereabouts of the child if removed from place of

residence for more than 30 days and notify the court and the department of any change of address.

Provisions regarding present law that the department or agency shall accept consent are expanded to provide that the person accepting consent must have reason to believe it is given voluntarily and without duress.

Six. In an independent adoption proceeding the court shall have sole jurisdiction of the care and custody of the child from the filing of the petition until a final order of adoption and shall adjudicate care and custody in the best interests of the child. The court may order an immediate hearing and may remove the child from the home of the petitioners at any time. The court may consider the questions of unfitness or abandonment if they are raised where a natural parent asks restoration of care and custody of a child. If the court approves raising of such questions, there must be an investigation by the department or agency before a hearing on the questions if the department or agency did not raise the questions.

Seven. The court is required to set hearing dates in all points of adoption proceedings and procedures are established for the hearings.

Eight. A copy of any adoption decree must be forwarded to the attorney of record, if any, or to the petitioners.

Nine. While an adoption petition is pending, the petitioners shall act as guardian ad litem in any suit for injuries done to the child by a third party if the injury occurred while the petition is pending. Only the petitioners may bring such a suit for the child.

Ten. A special report is required from the department or agency in an independent adoption if no consent has been filed with the court within 60 days of the filing of

the petition. Procedures are prescribed for various circumstances, including when the department or agency refuses to accept consent, the natural parents entitled to consent cannot be located, and when the natural parents are withholding consent.

Eleven. While an independent adoption petition is pending, only the consent of a petitioner is necessary to authorize medical treatment or surgery deemed advisable for the well-being of the child by a physician or surgeon licensed to practice medicine or surgery.

Twelve. Procedures are prescribed in all types of adoption where a single petitioner survives the death of a husband and wife who have petitioned jointly.

Thirteen. Appeal for all court orders allowed by the legislation except final orders of adoption may be appealed in the same manner as for an appeal to a Juvenile Court order, which is very quick action by the court.

Fourteen. Information concerning an adoption may be released by the department to various agencies and courts without a court order only while the petition is pending.

Fifteen. The statute of limitations for action to nullify a decree of adoption because of defects or irregularity of procedure is reduced from three years to one year.

Sixteen: An accounting of disbursements is mandatory prior to any final order of adoption. This is agency, step-parent, independent, or any other type. Court approval or disapproval is required and penalties or delays in the adoption procedure are made permissive to the court.

Seventeen. A reducible felony is provided concerning payments, and so forth, in connection with the



placement or procuring of a child, the petition for adoption or the consent to adoption.'

Eighteen. A misdemeanor is established for persons who take or send or conspire to take or send a child out of the State for the purpose of adoption without the approval of the department.

Nineteen. The time elements required before the court may consider action under former Section 701 of the Welfare and Institutions Code to free a child from the custody and control of the natural parents where abandonment, cruelty, neglect, habitual intemperance, moral depravity have been established, would be reduced from one year to six months.

A number of states provide for the termination of parental rights prior to placement of a child for adoption. And I am now discussing legislation which is the idea of more of mine than ACA, because this is not a part of our present legislative program.

Among the more interesting of these laws are the statutes of Colorado and Michigan.

Maryland's provision regarding termination of parental rights via a guardianship hearing to approve a guardian with right to consent could be modified to provide this type of protection in independent adoptions. However, Maryland law when used applies almost entirely to agency procedures.

In discussions with the foremost authorities in our State Department of Social Welfare and other public agencies, I have been delighted to note a growing agreement that some procedure for termination of parental rights prior to placement could solve many of the problems now inherent to our independent procedure in California. The Adopted Children's Association would favor such legislation. We did not make it a part of our 1961 proposals only because we could not devise a specific procedure upon which there was any unanimity of opinion among authorities outside our group regarding cost, responsibility, and other important details.

We would favor any legislation which acts to prevent disturbance of adopted relationships for reasons other than the unsuitability of the home or the unsatisfactory care of a child.

One legislative possibility which has not been given the consideration it might well deserve is some form of voluntary and permissive pre-placement investigation of couples and homes where an independent adoption is contemplated. Most independent placements are arranged some considerable time prior to the birth of the child, almost all such placements are contemplated by the adopting family for an extended period of time before a child is actually brought into the home.

Would it be possible for the State Department of Social Welfare or its licensed county agencies to make available on a fee basis, perhaps \$75, which is the charge for home study through the Children's Home Society, and with a provision as there is now in the case of fees for county agencies where placement has been made and a fee waiver in hardship cases? Would it be possible to have a pre-placement investigation of the couple in their homes as a suitable place and a family for a child?

Naturally, satisfactory completion of this pre-placement investigation would not interfere with or eliminate the need for an investigation of the situation after a child had been placed in the home. Completion of such a pre-placement investigation should probably not be made a prerequisite for any independent placement. However, its availability could, one, partially reduce the cost to taxpayers of independent adoption procedures in that a considerable portion of the required investigation would not be repeated at state expense in most cases;

Two, adopting parents who do not qualify for a favorable recommendation would discover this fact prior to the time a child was actually a part of their lives;

Three, adoption procedures could be simplified in some respects where a pre-placement investigation had been satisfactorily completed. Perhaps some form of anonymity could be possible at the request of all parties when adopting parents were already approved on this tentative basis. Perhaps it would be more practical, then, to permit an irrevocable consent to be signed prior to placement in approved homes.

Under circumstances where there was not time to make a pre-placement investigation, or where an adopting couple for some reason preferred to eliminate this permissive step, there would of necessity be a more extensive investigation after placement and perhaps the law should then read that an irrevocable consent would not be binding until such time as a pre-placement investigation could be completed.

It would be my hope that the Senate Subcommittee on Adoptions, as well as the Assembly Committee, would wish to explore this avenue of pre-placement investigation as a means of providing needed safeguards to all parties in independent adoptions.



Now, that is the extent of what we had to say on specific legislation. I don't know how long that has taken. Do you want me to enter into a discussion at all on the other questions?

CHAIRMAN RATTIGAN: Are there any questions from the members of the Subcommittee? I have one, Mrs. Schafer.

I note you refer to the desirability of a mandatory accounting of disbursements.

MRS. SCHAFFER: Yes.

CHAIRMAN RATTIGAN: And making improper placement activities a reducible felony and which, perhaps, I am wrong on that. You have a recommendation --

MRS. SCHAFFER: Make a reducible felony for conviction for the paying of money.

CHAIRMAN RATTIGAN: All right. Do you recall the specific bills during the last session of the Legislature on these subjects?

MRS. SCHAFFER: Pretty much. I have them with me if I don't remember them.

CHAIRMAN RATTIGAN: Well, one dealt specifically with an accounting of costs and disbursements.

MRS. SCHAFFER: Two others besides this. The Independent Adoption Association had one and the Department of Social Welfare had one which is before your Committee.

CHAIRMAN RATTIGAN: And you didn't have one, did you?

MRS. SCHAFFER: Yes, sir, our bill is comprehensive. It has it all. We took the whole thing and rewrote it.

CHAIRMAN RATTIGAN: Your Association did oppose at least one of the other bills?

MRS. SCHAFFER: We opposed, I think, the 2863, or whichever one of the Department bills, by virtue of the fact that we opposed certain wording.

CHAIRMAN RATTIGAN: Yes, I recall. I just wanted to refresh my recollection.

MRS. SCHAFER: Particularly, I don't know if I can brief this, we wrote Senator Regan regarding the 2863 and our particular complaints with the 30 day provision which requires this to be submitted 30 days prior to a hearing. At the time we were just completing our work on 2431 which required that there could be an immediate hearing in problem cases, and we felt that it was pointless to put a provision that said that this statement had to be filed 30 days prior to a hearing when, on the other hand, here we were just getting a law passed that said there could be an immediate hearing. And I talked to the people in the Department and I couldn't seem to get them to clarify this time situation, and certain other aspects of the bill. I think this was the one that troubled us most.

And in our letter to Senator Regan we pointed out that in AB 1951, which was also before the Legislature, we had given our own ideas on legislation to accomplish this, that we felt it was simply the structure of this 2863 which we had opposed. We tried to make it very clear that we were not opposing and certainly could not because we had our own bill calling for a full disclosure of all disbursements, and we feel that there should be a penalty. We feel it should be a court right to disapprove. We feel there should be permissive penalties, permissive to the extent that the court may or may not make use of them.

We feel definitely where there is a conviction of a petitioner with violation of a corollary section of our own law, which would be the reducible felony that we were discussing, if there were a conviction, then we felt definitely that the judge, if he felt that this should be done, could be entitled to dismiss the petition for this alone, if it were a conviction

by the court of the petitioner.

CHAIRMAN RATTIGAN: Any questions? Thank you very much, Mrs. Schafer. We appreciate the interest of yourself and the Adopted Children's Association and your full statement will be incorporated in the record.

MRS. SCHAFER: Well, we appreciate very much being invited to be here. We appreciate your taking all your time, too.

CHAIRMAN RATTIGAN: Sister Stanislaus? I am sorry, by mistake of the Chair, which went out of order calling on Sister Stanislaus, I overlooked the name of Mrs. Debs. I wonder, Sister, if you could for one minute bear with us? We did make that mistake, we did have a sequence of agenda and it was a mistake on my part.

MRS. ERNEST E. DEBS: Thank you, Senator Rattigan. I am Mrs. Ernest Debs. I am the President of the Commission of Los Angeles County Bureau of Adoptions; I am the Treasurer of the Citizens' Committee on Adoptions for the State of California; I am the first and the organizing President of the Adopted Children's Association; I have two adopted children who are now teenagers and I have got to get home to get their dinner. So I have submitted a statement to you which I think is as clear as anything I could say.

There may be a couple of cases here that I could mention to you that I feel are part of our troubles on independent adoptions.

The consideration of a couple for adoption should certainly be on what kind of parents they are and not for how much money they can pay to obtain the child, and it seems reasonable to suppose that if an attorney or a doctor, or an intermediary who is neither one, were offered an alternative of a couple who would pay \$1,000, and another couple who would



pay \$2,000, that the consideration would be money and not the ability of the people to be good parents.

In case number one I have cited here the attorney. You asked us for cases which we thought were in violation and might be corrected by outlawing some of this placement business. The attorney gave the natural parent general information about the petitioners but withheld the fact that the man petitioner had been convicted and was on probation for child molesting involving two five year old girls.

Now, this was an attorney that made the placement, and this happened here in Los Angeles County. I don't think that you gentlemen, or I think you would agree with us that this was not the kind of a home that a child should go into, into the home of a man who had been convicted and was on probation of molesting children.

There are several others here. As I say, you can read them. We have run into several cases where the girl was a Catholic girl, she requested of the doctor, lawyer, intermediary, that a Catholic home be found for her baby and it was later found out that the home was Protestant.

We, in reverse, found a Protestant girl who wanted a Protestant home and found out the girl was raised in a Catholic home. This cannot happen in an agency placement.

I don't know how clearly it has been brought out today, but I would like to restate, if I may, that the independent placement should mean only what it is, an independent placement by a girl who knows a couple. How she gets to know them is certainly not in our field, but it is necessary that she knows them.

Now, I know that there are cases where the girl doesn't give a hang what kind of parents her child gets. And this is why we have an agency that investigates. But we always

must keep in mind the fact that we don't want to eliminate independent adoptions, but an independent adoption, truly speaking, is one where the mother places, truly places the baby and she knows where the baby is going.

You asked a little while ago about what help these girls are given. We have a number of agencies in California that give help to unwed mothers, and among the string of things I mentioned a while ago that I am connected with, I am on the Board of Directors of the Salvation Army Home for unwed mothers. We care for around 700 girls in Los Angeles County alone. They are unwed mothers. Most of those girls pay their own cost of care. Their parents pay it, or we do have girls that are working outside, we have most all of the time at least 45 girls in wage homes. They come into our hospital for clinic care and for delivery of their baby. So there isn't any financial problem involved there as far as an adoption is concerned.

These girls, some place with agencies, some keep their babies, and some place them independent. The maternity home is in no way connected with any adoption agency.

A moment ago someone asked why the Bar Association and the Medical Association doesn't do something about it, and maybe I am a little bit too frank, but I would like to tell you why I don't think they do anything about it.

On the Bar Association Committee you gentlemen, being all lawyers, no doubt know that this committee, the Adoptions Committee, isn't of too great an interest to most lawyers. So what happens? Only the lawyers land on that committee that are in the business. So any recommendation that comes out of this committee of the Bar Association is a slanted view given by the attorneys that are in the independent placement field principally. I don't know about the doctors.

CHAIRMAN RATTIGAN: I don't mean to interrupt,

Mrs. Debs. Are you speaking of the Committee as presently constituted?

MRS. DEBS: I am not speaking -- well, no. This committee right now I think is about half and half.

CHAIRMAN RATTIGAN: You are speaking of the State Bar Committee?

MRS. DEBS: I am speaking of the State Bar Committee.

CHAIRMAN RATTIGAN: On Adoptions?

MRS. DEBS: Yes. A few years ago the man that wrote the pamphlet on adoptions, "The Role of the Lawyer", was a man who does probably more independent placements of children than any attorney in California.

CHAIRMAN RATTIGAN: It is a matter of interest to note in passing that I don't think that is true now. The Chairman is going to testify, I believe, tomorrow. He will be first to state he doesn't engage in the business at all.

MRS. DEBS: Well, that is fine. This has been true, though. This was not brought out today, but this really is true and has been in the past.

I don't know about the committee today, but it has been in the past, that those lawyers who serve on these committees, even your local committees, the committees right here in Los Angeles County, I don't blame these fellows. This is fine. This is the business they are in and they should take an interest in the business they are in. But this is the way it has happened, this is why I don't think that any reprimand, let us say, has come on the part of the Bar Association to the attorneys that are engaged in this, they being in a sense slapping their own wrists.



I certainly agree with Senator O'Sullivan on his interpretation of placement and feel that his interpretation was right and I have been looking for and asking some of the lawyers where they could find some other law that was based on something that is, well, as hard to define as this is. And I think your poppy cultivating was a very, very good illustration.

That is all I have to say. Are there any questions you have to ask me?

CHAIRMAN RATTIGAN: Yes, I have one that I now recall. I have two questions. You cite thirteen specific cases in which there was something very clearly wrong with the parents to whom the baby had been committed. What happened in those cases? Was the decree granted?

MRS. DEBS: Some were and some were not.

CHAIRMAN RATTIGAN: Do you recall how many?

MRS. DEBS: No, I do not. I didn't know that. I just read over the cases and just picked out a few that would be --

CHAIRMAN RATTIGAN: My other question is pertaining to your mentioning the disparity of the religious preference. You said this could not happen in an agency adoption. By this do you mean that the agency would honor a preference expressed by the natural mother?

MRS. DEBS: Yes.

CHAIRMAN RATTIGAN: Or it would ignore it? It cannot either way.

MRS. DEBS: They would honor it. They would honor it. I mean, if a Mormon girl says "I want my child placed only in a Mormon home", if a girl who is a Christian Scientist says, "I want my child placed only in a Christian Scientist home", that is what happens. It doesn't go any place else, Catholic, Presbyterian, Baptist, whatever it may be. This is followed to the rule. And these cases I cited, there are several of them

and in the one case where the girl wanted to change her mind and because of the financial obligation involved to the adopting parents finally signed a consent.

CHAIRMAN RATTIGAN: Any questions from the Subcommittee? We very much appreciate your being here, Mrs. Debs. Thank you.

MRS. DEBS: Thank you.

CHAIRMAN RATTIGAN: Sister Stanislaus?

SISTER M. STANISLAUS: May I please introduce Mr. James Broderick, who is vice-president, and who is also an attorney?

CHAIRMAN RATTIGAN: Yes. Again my apologies for shunting you back, Sister.

SISTER STANISLAUS: That is perfectly all right.

CHAIRMAN RATTIGAN: Is this written statement in letter form your statement for the Committee?

SISTER STANISLAUS: Yes. Yes.

CHAIRMAN RATTIGAN: Is this what you would like to present verbally?

SISTER STANISLAUS: Well, yes. I mean, I know time is very short.

CHAIRMAN RATTIGAN: Well, it is fairly short, and if you would like to make the presentation from the letter, please do so.

SISTER STANISLAUS: I am the administrative director of the Holy Family Adoptive Agency, and we are a private adoption agency non-sectarian. Our actual contact with independent adoptions is rather limited and indirect. We feel that there are two things under the independent law for independent adoptions, two major difficulties: First, regarding the child that the home is evaluated after the child is placed there, and we feel that this causes quite a lot of upheaval, emotional, if the child --

the home is found unsuitable and the child is removed. This came to my attention in a 16-year old girl who was -- when she went to sign the consent, she found out these people were emotionally unstable and the child had to be removed and it was turned over to us to place.

Then, also, with the natural parent I feel that there is lack of counseling. We in our adoption agency, the girl comes to us in the early stages of pregnancy and we assist her with counseling toward adoption, if this is her plan, or we tell her how she may keep her child and point out to her the community facilities that are available to her, and we work with her through this.

Now, I feel that in the independent adoptions this is not done. This girl receives little or no counseling. And this came to my attention a few months ago when a girl called me. She had had an independent placement two months previously and she was undecided whether this was the right thing for her to do or not. So she went to the home and reclaimed the child. She went to her apartment with the child, but she had no means of taking care of the child, she had made no preparations for the child's return to her home. So she put the child in the car and drove around for the whole day.

So she called me about 6:00 o'clock in the evening and asked if we could give her some help with this child. So we told her that we would be glad to board the child for her until she had made her decision.

Now, these two points, I think, in the independent adoption are the two major difficulties.

Many times we are called in on situations where the independent placement has fallen through. The natural parent -- the adoptive parents cannot accept the child due to a physical handicap, or because it is the wrong color. It may



turn out to be a negro child, and they cannot accept it, and then the hospital notifies us that this child is born and then we come into the picture.

But this is very disturbing, I feel, to the natural parent who has planned this, and she has a great feeling of guilt because the people have already paid her bills and then the adoptive parents are very upset because they have planned on this baby. So these are things that I feel in the independent adoption are major problems.

Under the present law the doctors and lawyers are not permitted to place children for adoption. The problem is that doctors and attorneys want to be helpful, but they do not know what they can do. Girls turn to their doctor and they ask for help and doctors refer them, many times, to an agency. But sometimes they refuse to go.

Now, in my work, I was in a hospital prior to being in the adoption agency and I know many good obstetricians who say to me, "Sister, what am I going to do with these girls? They refuse to go to the agency and I don't want to be involved with them."

These are good men who really can help these girls. And the same way with many attorneys who just refuse to have anything to do with independent adoptions.

So I think the law has placed certain restrictions on home findings to protect the interest of the State in the rights of the parent and child, and if the present law is clarified as to the role of the doctor and the lawyer, then the penalty should be increased.

Then petitioners should be required to file an accounting as this offers an effective means by which the courts may exercise control over abuses in the questions of attorneys' and doctors' fees.

The term "placement" should be clarified as it

may be used in a broad or limited sense. It could involve the physical placing of a child in a home or assisting in the selecting of a sound and stable home from first-hand knowledge of the home.

A clarification of the term would result in better enforcement of the law. We feel that our adoption law is basically sound and good, but clarification and not changes are indicated.

That is about the summary.

CHAIRMAN RATTIGAN: Any questions from the Subcommittee?

SENATOR O'SULLIVAN: I have one question.

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: Sister, in the case of placement the mothers come to you. Is it normal practice prior to the time that the child is born for them to relinquish the child, or do they normally relinquish afterward? How is it?

SISTER STANISLAUS: No, the girl comes to us many times, maybe three, four months prior to adoption. She calls and says, "I want to put my child out for adoption." We make an arrangement to see her in the office and we tell her this is what she plans now, but maybe towards the end of the term she will feel differently, and we will be glad to help her make arrangements to keep her child, or to plan for it otherwise. We see these girls at least four times before delivery and then we see them in the hospital after delivery. And then we have them sign what we call a temporary boarding agreement, and this gives us permission to remove the child physically from the hospital, to place it in one of our foster homes where the child receives foster care which we pay for to the foster parents, and this gives the mother time to go home to really make up her mind that this is what she wishes to do, and in the meantime the

child is receiving care, physical care and medical care. We have our own clinic at the agency.

And then when she feels ready she calls us and makes an appointment. At that time she comes in and she states whether she really wants an adoption, or whether she wants to reclaim her child, or whether she wants to board it for a longer period of time. Then, if she wants to sign the relinquishment, we ask her if this is what she really wants to do, if she realizes that when she does this that it is final and binding, and that she may not at any time after this reclaim the child. And then we ask her if she is doing this freely of her own free will, that no one, either her relatives or friends or anyone has forced her to do this, and then we ask her if she is married or ever has been married, if it is to establish sole custody. If she has not married, then she has the sole right to relinquish this child. This is all done in the presence of witnesses.

But this isn't done until the girl is really medically well and stable and emotionally well. I mean, it is never done before three weeks. And then, if it is - and the child is certified by the doctor that everything is all right by the child. And if the child cannot be placed, adoptable, we make arrangements to give the child institutional care. This is something that I think independent adoptions don't take care of because, if the child is physically unable to be adopted, then it is put back to the natural mother.

SENATOR O'SULLIVAN: Do you find very many instances of the mothers wanting to keep their children?

SISTER STANISLAUS: Well, we take about thirty children under care a month, and out of those thirty, I think about six are returned to their parents every month.

SENATOR O'SULLIVAN: Permanently?



SISTER STANISLAUS: Yes.

SENATOR O'SULLIVAN: Do they ever bring them back again?

SISTER STANISLAUS: Yes. Sometimes they bring them back after six or nine months.

SENATOR O'SULLIVAN: Very many of them?

SISTER STANISLAUS: No, not too many, but it has happened.

SENATOR O'SULLIVAN: Thank you.

SISTER STANISLAUS: And we tell them this, that if this doesn't -- if they don't work out, I mean, they can always come back to us. And we always see that there is a plan to take care of the child before we release it to them, that they have the facilities for taking care of it. And we provide them with a layette, if they don't have it, and things like this.

SENATOR O'SULLIVAN: That's all.

CHAIRMAN RATTIGAN: Sister, I have one question relative to the portion of your statement that appears quite early in it to the effect that the independent adoption might not -- well, the question of protection it provides for the child in that it offers no sound and skillful basis for evaluation of the home and selection. And I take it that that means, it rather obviously means to me that as contrasted with the agency adoption.

SISTER STANISLAUS: Yes.

CHAIRMAN RATTIGAN: From which it follows that the agency adoption is the vehicle in which sound and skillful basis for evaluation is made.

Is it your feeling that only an agency and only people trained and experienced in agency work can exercise sound and skillful judgment in the evaluation of an adoptive home?

SISTER STANISLAUS: No. I wouldn't say that,

Senator. But, I mean, from -- I don't know what goes into an independent placement. As far as I know, this home is not evaluated until after the child is placed in it.

CHAIRMAN RATTIGAN: Now, it certainly is not by the State. I am not now talking about this trafficking in babies that has received considerable attention at this hearing. But I just wonder whether sound and skillful judgement and evaluation of an adoptive home is the exclusive monopoly of an agency, public or private, or whether an individual might not be able to exercise sound and skillful judgment in evaluating a home with or without a license.

SISTER STANISLAUS: Well, I suppose it is possible.

CHAIRMAN RATTIGAN: Did you say you had how many a year of these cases? Not independent adoptions, how many children do you handle per year, your service?

SISTER STANISLAUS: Last year we placed in adoption 194 children, Senator.

CHAIRMAN RATTIGAN: Any other questions?

SENATOR CHRISTENSEN: Sister, in the event of a relinquishment, actually signed and executed, has there ever been any occasion when that was avoided and a child returned to its parents?

SISTER STANISLAUS: Yes, Senator, with the mutual consent of the agency.

SENATOR CHRISTENSEN: Has the consent by the agency ever been declined so that the relinquishment, once signed, has become final?

SISTER STANISLAUS: Yes.

MR. BRODERICK: That is true.

SENATOR CHRISTENSEN: Do you believe there should be some recourse by the natural parent in that situation

other than attempting to negotiate a consent of the agency?

SISTER STANISLAUS: Yes, Senator. Maybe Mr. Broderick can tell you his case.

MR. BRODERICK: I can give you a case that we had in the past year, Senator. We had a case of an unmarried couple; the mother had placed the child with the agency, a full year had elapsed, and the petition had been filed by the adoptive parent having had the child for a year for adoption, at which time the mother, the natural mother, through her attorney, asked to have the relinquishment revoked upon the ground that she and the natural father were contemplating marriage.

We advised them that we would talk with them and discuss their problem with her alone, or with her attorney, or with her family, or all of them if she wished, which was done.

At that time they had only been married, I think, something like 24 or 36 hours. The record was replete with bitter accusation against the natural father in the very beginning, when the mother came to the agency in the beginning, including a failure to provide charge.

So, the agency was doubtful as to whether or not it was for the best interests of the child to give up the child, back, in other words, to cooperate in the rescinding of the relinquishment. And the decision of the board, after full consideration, was that the relinquishment should not be rescinded for the reason that we did not believe that it represented a stable home, even though they were the natural parents.

And the other factor was that the child had already been in the adoptive home for a full year, which represented extreme emotional trauma to the child, plus the fact that if the marriage didn't work out, it would be another



emotional trauma for the child.

And we did, we made this decision with some misgivings; that is, misgiving as far as emotional is concerned on behalf of the natural parent.

In the meantime, the adoptive parents became very ill. The mother became extremely ill and had to return the child to the agency. In the meantime, about six months had elapsed, it had gone to court, this was tested before the court and the court sustained our position as to the right to withhold the rescision of the relinquishment.

But, in the meantime, the natural parents had been married for about, almost eight months, and the marriage was investigated, the couple were living very happily, and it appeared to be a good marriage. And, in view of the circumstances of the extreme illness and sudden illness of the adoptive parent, we then cancelled the relinquishment and the child was placed back into the natural home. So you have all the gambits in one.

SENATOR CHRISTENSEN: Have there ever been cases where the relinquishment, though, has been declined and the adoption decree actually signed? A request by the natural parents --

MR. BRODERICK: Yes, there has been. That happened this year, unfortunately, too.

SENATOR CHRISTENSEN: In other words, that is purely up to the agency, a private agency, in that case, to determine whether they wish to join in a voluntary relinquishment.

MR. BRODERICK: This isn't exactly the type of case you have in mind, but it happened in this case the child again had been in the custody of the agency for over a year and had been placed almost a full year with the adoptive parents.

A petition had actually been filed, and when the agency was contacted, not by the natural mother, but by the natural grandmother, and in that case the natural grandmother said that the natural mother wanted to rescind and an appointment was set up, never kept, and a proceeding was taken on behalf of the natural grandmother.

SENATOR CHRISTENSEN: She was the one that gave the relinquishment in the first place?

MR. BRODERICK: That is why I say it is a little different. And the natural mother never did come in. But there was a formal objection filed in court and later withdrawn.

SENATOR CHRISTENSEN: By the natural mother?

MR. BRODERICK: No.

SISTER STANISLAUS: By the grandmother.

MR. BRODERICK: By the grandmother.

SENATOR CHRISTENSEN: Thank you.

SISTER STANISLAUS: Thank you very much, gentlemen.

CHAIRMAN RATTIGAN: Sister, and sir, we thank you both very much for giving us the benefit of your comments.

SISTER STANISLAUS: Thank you.

CHAIRMAN RATTIGAN: Mr. Curran? Mr. Curran was not on the agenda because he did not anticipate that he would be able to be here. He asked that he be carried in a standby status.

Do you want to make some comments, Mr. Curran?  
We are limited very severely.

MR. ROBERT O. CURRAN: Yes. One judge accused me being notably brief. I speak as a private attorney.

CHAIRMAN RATTIGAN: Will you identify yourself by name and address for the record?

MR. CURRAN: My name is Robert O. Curran. I practice law in San Diego at the present time. During the past

20 years I have practiced in counties both in Northern California and Southern California. I wish to speak from the point of view of a private attorney who, from time to time, has been asked to participate in adoption proceedings, both agency and independent.

I find, as a result of this experience, that it is difficult for me to believe that the law, as it was amended from time to time in the Legislature, was intended to be operating as it is today. And I do not mean the things that this Committee has under consideration with reference to Los Angeles County.

I would like to exclude from my comments anything with reference to Los Angeles County and direct it to problems which come up in most of our other 57 counties.

I think that if we adopt the approach of Mr. Justice Brandies, the functional approach, and see how the system operates, that with a few minor changes in our present law we can have a much better system.

I would propose that this Committee should give serious consideration to the following:

1. I believe that the consent should be spelled out by the Legislature, the form should be set forth in a specific statute instead of now as the law reads allowing a department to provide for the form of consent.
2. I would suggest that the consent should be signed before the judge of the Superior Court.

Now, at first blush it seems that maybe this isn't important enough to take the time of a judge. To the contrary, gentlemen, I think that the emotional problems involved, the fact that there is nothing more important to people who want to adopt children and who want to be protected, should be taken into



consideration. And I think that if that consent was before a judge in the Superior Court and it could be in chambers, we would automatically take care of many of the problems that we are talking about in the Los Angeles situation involving placement and brokerage. I think that it could stop right there.

I think that not only in the consent, but in the procedure as a whole, that we have to return these adoption proceedings back to the court.

Now, it is true, you read the law and it doesn't say that the court doesn't make the order. But there again, what happens in most of your counties? Not most of them, but at least in some of them sufficiently, in my experience, to indicate that certain judges tend to feel that there isn't much they can do after awhile; that if the Department recommends the approval, they simply put a rubber stamp on it.

Now, the presiding judge in San Diego County within the past couple of years had a very shocking experience in that regard as a result of which, on his own motion, he set aside a decree of adoption. The matter is now in our books.

It went up to the District Court of Appeal and his setting aside was sustained, so that I think that not only would it make the system more workable in our smaller counties where frequently the judge has more personal knowledge of the facts of the situation than some investigator, perhaps from even outside of the county, but it would enable Los Angeles, with its now more than 100 judges, to set up some systems of its own wherein, if they have particular problems, they can solve them here. And in order to give the court this greater authority, it would be my suggestion that this Committee give serious consideration to taking away the mandatory requirement that a report be submitted by the Department of Social Welfare or the

County Agency as the case may be so that it would be discretionary with the court as to whether or not it wanted to call for such an investigation. And if so, that the investigation would be by an arm of the court.

I believe that, Mr. Chairman, should take care of my time that you so generously allotted me.

CHAIRMAN RATTIGAN: Any questions of Mr. Curran?

SENATOR CHRISTENSEN: Mr. Curran, you have in mind insofar as the execution of the consent is required that it be actually signed before a judge who would act somewhat like the judge does in approving or disapproving a minor's compromise; let the people know exactly what they are involved in, what the extent of their commitments are both as to the adoptive parents -- the adoptive parents alone. The consent form itself, what I had in mind, would you have the adopting parents there as well as the natural parents?

MR. CURRAN: I see no necessity for that, Senator Christensen. I think that mention has been made as to the need of counseling, and certainly a sympathetic judge could give considerable counseling to a mother or mothers and fathers.

As a matter of fact, interestingly enough, I have a case right now where we have a married couple that want to place their child up for adoption, so that there wouldn't be any necessity of the adoptive parents being there, and there again it might be a matter that the Legislature should leave that to the discretion of the court as to whether or not the court felt that it would be advantageous.

Now, one of the disadvantages, of course, is the fact that there might be some matters of being confronted that the parties didn't want; that both parties didn't want.

SENATOR CHRISTENSEN: This would require a confrontation in the event it was the subject of your

recommendation? In other words, where the parents would get to know each other?

MR. CURRAN: That is exactly right.

SENATOR CHRISTENSEN: It has been urged here today that that is desirable insofar as independent adoptions are concerned.

MR. CURRAN: I can give you a couple of specific instances wherein it has proved very desirable because, from the point of view of the adoptive parents, it made them have a better understanding of what the child might be, having had an opportunity to understand somewhat the character of the mother.

From the point of view of the natural mother, it made her completely free in her mind that she had made the right decision and she could go her way.

SENATOR CHRISTENSEN: It also might have the opposite effect, though.

MR. CURRAN: We have many instances, unfortunately, Senator, where it has had disastrous effect to the opposite. There is no question about it. And of course, that gets to the very point which the agencies stress; that it is only through an agency adoption that there can be an anonymous -- so that the natural parent has no occasion to be confronted, I mean the adoptive parent has no occasion to be confronted with the natural parent.

It seems to me that you have to read something into the statute that isn't there in order to arrive at that conclusion.

Be that as it may, in many cases I think that both parties start out with the feeling that it is advantageous, that their identity not be known. I know of one particular case in which, at the last minute after the birth of the baby, a child was declined because the natural parent insisted that



she have an opportunity to see the adoptive parents.

SENATOR CHRISTENSEN: Mr. Curran, I think some of your suggestions here are quite at variance with some of the testimony we have heard today. I know I don't think our record would be complete until we had this reduced.

Would you care to make this in the form of a written communication as well as your actual testimony to the Committee?

MR. CURRAN: Yes, Senator. I will be very happy to do so.

Actually, I was not able to devote the time to this that I would like to. I am trailing, otherwise I wouldn't be here. This Superior Court down in Long Beach didn't have any courts available. But I certainly would give some thought to it and be able to put it in writing for the Committee.

SENATOR CHRISTENSEN: Thank you.

CHAIRMAN RATTIGAN: We can then expect to hear from you in letter form reciting the substance of what you have told us today?

MR. CURRAN: I know not how soon, but eventually you will, certainly. Before you reconvene to consider these matters, Senator.

CHAIRMAN RATTIGAN: All right. Any further questions, Senator? Thank you, very much, Mr. Curran.

MR. CURRAN: Thank you, Mr. Chairman.

CHAIRMAN RATTIGAN: We are starting tomorrow morning at 9:30 A.M. rather than the reported hour of 10:00 A.M. We are hoping to allow ourselves a little more time. Until 9:30 tomorrow morning we stand adjourned.

December 6, 1961

9:30 o'clock A.M.

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CHAIRMAN RATTIGAN: The Subcommittee will be in order. Dr. McNeil.

DR. ROBERT J. McNEIL: Yes, sir. Where do you want me, sir?

CHAIRMAN RATTIGAN: Just be seated, Doctor, and identify yourself for the record.

DR. McNEIL: My name is Robert J. McNeil and I am a practicing physician.

CHAIRMAN RATTIGAN: Proceed.

DR. McNEIL: Well, I don't understand what you want, Your Honor. I came down here for an interview. I wrote a statement. Does the Committee want me to make some further statements?

CHAIRMAN RATTIGAN: This is your statement prepared in writing?

DR. McNEIL: Yes, sir.

CHAIRMAN RATTIGAN: And you are representing the --

DR. McNEIL: California Medical Association Committee of Adoptions.

SENATOR O'SULLIVAN: Question. May I ask a question?

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: Doctor, on Page 3 you say that "In other instances, there are people who refuse to go or strongly prefer not to go to an agency in order to have their expectant child adopted."

This is a statement from your actual experience,

is it?

DR. McNEIL: Yes, sir.

SENATOR O'SULLIVAN: Could you elaborate just briefly on it?

DR. McNEIL: Yes, sir. When we see unwed mothers, particularly those of mature age groups, that means 30 years of age, 35 years of age, they resent the implications of a psychological or semi-psychological interview and interrogation by any group beyond the initial contact with the doctor. They have come to the doctor of their choice, they have a problem, they feel that he has a solution or should have a solution for this problem, and they don't see why there should be a lot of drawn out questioning concerning such factors as why did this happen, where did it happen, who did it, and why did you do it.

They feel that, as in my case, I refer these patients to an agency because I don't do placement in the sense of the word that it has been used in many instances. I don't have a list of people in my office that want babies right now, in other words. But I frequently have to ask that this woman has made up her mind, I think she is mature, and I think that the interrogation should be limited.

SENATOR O'SULLIVAN: Do you think in the event that strictures are put on, legislative provisions restricting it to state only that, there would then develop attempts to get around the law by these people going out of the state, having their children out of state, or by subterfuge, placing the children independent of the agency any way?

DR. McNEIL: Yes, sir, I know this is true. And I know that in instances where I have insisted that there be a contact made with social service, that these people are refused this. They have gone to other places and come back to me and say, "I have made arrangements to have my baby taken



care of if you will do the obstetrics."

I sometimes question the validity or the reasonableness of some of the placements that they do this way. Sometimes I think they are fine.

But this is not my problem as an obstetrician any more, and I therefore counsel them as best I can as an obstetrician.

SENATOR O'SULLIVAN: Do you feel that doctors or lawyers, either one, should be licensed to place children?

DR. McNEIL: No, sir, I don't. I think that the doctors particularly, I speak better for doctors, are licensed to practice medicine. Within this field they are licensed and expected to counsel people with their problems. Their problems are multifold.

In my office every day my problems range from a discussion with the District Attorney to a brochure about problems that my patients bring into me. This is part of our practice.

To license them to adopt babies would merely mean that they would then become an agency, and they should qualify as an agency does, and if they wish to have both licenses, I don't see any reason why they shouldn't.

SENATOR O'SULLIVAN: On the matter of accounting, do you think the state agency ought to account as well as the private, independent parties involved in a transaction?

DR. McNEIL: Yes, sir. I feel strongly about this, and I am certain that many other physicians feel the same way.

SENATOR O'SULLIVAN: Do you have a feeling that the cost of the state adoption, if it was all costed out and accounted for, would amount to \$1500 to \$2000, probably? In that field?

DR. McNEIL: I don't have a specific figure for

the state agency. I know the figures for the private agencies. I don't see how the state agency can do a better job for less than a private agency because they hire the same quality people. And we are talking about salaries, we are talking about overhead, electric lights cost the same to the state as they do to the private agency.

SENATOR O'SULLIVAN: So you feel in the matter of cost there would probably be an offset, that there wouldn't be much difference between the two?

DR. McNEIL: That's right, sir.

SENATOR O'SULLIVAN: Have you in your practice found any abuse of the placement, independent placement system?

DR. McNEIL: I have heard a great deal about this, sir. I have been quite active in the adoption field for many years, almost twenty, and I have heard a great many people say this is going on, and this happens. When I specifically have asked for an individual who has done what for the purpose of chastising him through action by the County Medical Society, I have never personally been offered a proof. I have never been shown this doctor did this at this time, and therefore it is wrong.

Now, in my own instance I sometimes will get a fair volume of unwed mothers in my office and therefore I could be considered a placing doctor. It so happens that I am not. But it is because I am interested in these people.

These girls need medical care more than anyone in the United States. A secure wife of an executive who has three children and financial security, social security, she doesn't need a good obstetrician. Anybody can take care of her.

But the unwed mother who is frightened, who has no husband, who has no boyfriend, who has no family, she needs

a mature man to help, and this is my place in the community that I feel I can help an unwed mother.

Now, I don't think that the volume a person does indicates an abuse in this sense of the word. Now, I have an associate who is not really interested in this. His volume is so great that he doesn't have the time to sit and talk with these people, so, although he does more obstetrics than I do, he doesn't do as many unwed mother cases as I do. That is why I devoted my time to the Salvation Army Hospital for five years, because I felt there was a need for someone to do this who was a mature obstetrician with understanding.

SENATOR O'SULLIVAN: Then to your knowledge, as far as the medical profession is concerned, you don't know of any doctors that are, for money or fees, finding, procuring or referring people or children for the purposes of adoption?

DR. McNEIL: I think I should qualify that further because I think there is a misconception of this. We are all in the practice of medicine for money. Now, we are dedicated individuals in this sense of the word, and I think this is an important thing. People overlook the fact that although we are dedicated, we get up at 3:00 o'clock in the morning to see anyone who is sick, we still expect to eat and we expect a reasonable fee for what is done.

SENATOR O'SULLIVAN: Sure.

DR. McNEIL: And I think too often one of the problems that we have is that we are expected to do things for unreasonable fees and are criticized for asking for more than this. Therefore, there are doctors, I know, who have unwed mothers come to their office who have people who they feel would make good adoptive parents, these people are introduced to the unwed mother and the mother makes the placement.

Now, there is some question in the minds of many



people as to whether this is subterfuge or whether this is sincerity or not.

SENATOR O'SULLIVAN: Does the doctor get paid for making the placement, or merely for the medical services he renders to the unwed mother?

DR. McNEIL: For the medical services alone.

SENATOR O'SULLIVAN: For the medical services alone?

DR. McNEIL: That's right.

SENATOR O'SULLIVAN: Do you think that you can define pretty accurately, so that no one would get caught in a prosecution that they shouldn't be caught in, define what are the medical services as opposed to placement? Do you feel any fear that someone, some doctor, might get prosecuted that shouldn't, or convicted that shouldn't?

DR. McNEIL: I think not, if the doctor understands the entire implication of placement.

Now, I think there is another very real factor. I think that many people in the past, perhaps not so much in the present, but in the recent past doctors haven't understood what their obligations are, and they don't appreciate that the actual giving of a baby without the introduction of the people so that the unwed mother gives the baby to the adoptive parent, I think in this instance that there have been some people who have violated the spirit of the law. But I don't think this has been done for an excessive fee on the basis that they have an available baby.

I don't personally know of anyone who has been proven to charge an excessive fee for this.

SENATOR O'SULLIVAN: Well, do they charge the fee for the placing of the baby, or do they just charge a fee for the medical services rendered the mother and the baby?

DR. McNEIL: They charge a fee for the medical services to the mother and whatever is attendant to this care. These women are not as easy to take care of as the secure mother. And my feelings --

SENATOR O'SULLIVAN: Let me ask you a more pointed question, then. Suppose that you had an unwed mother who had a little trouble psychologically, or mentally, and you assume, let us assume that you felt, as a physician, or some other physician, let us say, felt that if the child wasn't placed in a home that maybe that it would cause, or it was quite likely to proximately cause the girl to have some sort of a mental breakdown.

Now, in the course of the doctor's practice he places the child in order to accomplish this purpose.

Would you consider that medical service or not?

DR. McNEIL: If he actually made the placement and the mother did not make the placement, that would not be medical service.

SENATOR O'SULLIVAN: All right. He did this. Let's assume some more facts, that he went out and found the mother and father for the baby, or one of his patients came in the office and he said, "Do you want a baby?" And they said, "Yes, we would like to have a baby."

He said, "Well, I have one. I have a patient that is going to have a baby and she is of a good family and the father was of a good family, and you are white Caucasians and the baby will be a white Caucasian, and the mother has a little nervous trouble and it is disturbing her quite a lot not to have the baby placed in a home, she is worried about it."

And the people say, "Well, we would like to have a baby."

Now, the doctor says, "The woman doesn't have

much money. We will need \$300 for her medical care. And we will need \$100 more to take care of some incidentals."

So the people give him \$400. And the baby goes, the woman goes to the hospital and has the baby and on the day after the baby is born they call at the hospital with a blanket and the doctor delivers the baby to them.

Later on they take the baby home, care for the baby, the woman signs a consent, which has all gone through, the family home has been examined by the Department, and they go before the Superior Court and the baby is adopted.

Now, there is a complete consummation of the transaction.

Do you consider the services that the doctor rendered medical services in any sense?

DR. McNEIL: Well, if he delivered the baby --

SENATOR O'SULLIVAN: In every sense, rather?

DR. McNEIL: In every sense?

SENATOR O'SULLIVAN: Yes.

DR. McNEIL: As I understand your statement, whether it is hypothetical or otherwise, he said to these people, "Would you like to have a baby?" He said to this woman, "Would you like to give your baby to these people?"

If these people met and she says, "I approve of these people," then she makes the placement.

Now, this could be circumvention of the spirit of the law, but this is in essence what is done.

SENATOR O'SULLIVAN: That is in essence what actually is done, isn't it?

DR. McNEIL: Yes. On the other hand --

SENATOR O'SULLIVAN: That is pretty substantially what takes place in a lot of these cases, isn't it?

DR. McNEIL: That's right.



SENATOR O'SULLIVAN: Do you think that is bad or not? Do you think it is bad for the baby, bad for the parent, or bad for society? I would like to have your opinion.

DR. McNEIL: My own opinion is that it is not bad if this man is sincere in his approach to it. And I have done this in the past myself.

As a matter of fact, I have five children within my family which I have done just exactly this, and every one concerned knows all about everybody, and I have made the statement to all of the relatives involved that if any one of these women wants this baby back at any time, that I will never for the moment fail to disclose exactly where the baby is at any time until after the adoption is consummated formally. And I think that this service can be done. I feel that if I have a patient, for example, I will give you one exactly, a girl that I went to high school with, all the way through high school, and all the way through college, who came into my office in 1941 pregnant illegitimately, my half-sister could not have children so I told this girl about my half-sister and her husband and she decided this would be a good place for the baby to go.

She met them, they adopted the baby, and they are raising the baby. The mother, as a matter of fact, still knows where that baby is. She has never seen it, never come to it. And I think this child is happy in this home. My half-sister's husband is a successful man, the child is happy there, he is now high school age. I think the service to the community was performed.

This was performed for a great deal more reasonable expense to all concerned than it would be if we had gone through any form of social investigation. And I think that the facts as I knew about both parties were as much as anyone

would find out by a social investigation.

SENATOR O'SULLIVAN: Well, I take it, then, that your feeling is that the practice is a sound one socially and that it is not to be proscribed?

DR. McNEIL: I think it is sound if it is sincerely carried out. And I think this is the basis of all of the practice of medicine. You must be sincere in what you attempt to accomplish and you must be capable of accomplishing what you intend to do. The same thing is true of surgery. If you don't know how to do surgery, you shouldn't try to do it.

If you know what you are doing, I think it can be done so long as it is done completely aboveboard.

SENATOR O'SULLIVAN: Thank you.

SENATOR CHRISTENSEN: Doctor, were you present yesterday when testimony was given as to certain proposed amendments to the Act which would enlarge or attempt to further define the act of placement?

DR. McNEIL: No, sir, I was not.

SENATOR CHRISTENSEN: For your information, there was a proposal suggested that it include not only whatever the act of placement means, but the act of referring, finding, or procuring a home for the child.

In connection with Senator O'Sullivan's questions, and with particularly the situation that you referred to yourself in connection with the half-sister, do you feel that if a statute like that were enacted it would have a tendency to prohibit the doctor, or limit his willingness, perhaps, to undertake the same kind of thing that you did in that particular case.

DR. McNEIL: Yes, sir, I think it would. The word "procuring" would be one that would be very difficult to define, and it has a very bad connotation in our society today.

SENATOR CHRISTENSEN: I realize that. But apart

from that particular word, I mean, the other two of referral or finding --

DR. McNEIL: Well, I think referral or finding would also limit and handicap and would limit the position the doctor might be in in counseling.

Now, in my own experience, for example, as I said, I have found in recent years through some activity of mine with the cooperation of many others, and particularly Mr. Walter Heath, we have helped - you don't do anything alone, you do things with large groups - to obtain funds from the state for medical care for the Los Angeles County Bureau of Adoptions to pay doctors so they will deliver babies. Well, with this basis I send these patients there, they come back to me and say, "Well, my social worker said so and so."

Well, I don't feel bound to agree or disagree. I am a physician, I am her obstetrician. I will try to work this out if I feel it is necessary.

I don't hesitate to call Mr. Heath and say, "Look, we are at a point of disagreement. The girl is unhappy. Let's work this out."

If those things were put together, I would not feel the freedom to counsel this girl because I would not know legally where I overstepped the bounds.

SENATOR CHRISTENSEN: Isn't this true, doctor: That any obstetricians, when they undertake the obligations with relationship of attending doctor, both before and after the birth, legitimately feel that they want to do everything they possibly can based on their experience from any and all sorts to help that particular patient and that particular mother?

DR. McNEIL: Yes, sir. This is very true and very important. When I was Chief of Staff of the hospital for the Salvation Army I used to tell the girls if they had problems,



if they wanted to come to me, I would be glad to see them in my office as private patients. And I had a so-called clinic in my office on Friday mornings when I saw these girls for \$1.00 apiece.

Anyone that wanted to come with any problem they wished to bring I saw, after they left the home, or during the time they were in the home. And I tried to work out their problems as best I could.

While they were in the home they went back to the social workers there to work out as best they could. After they left the home, then whatever I could do to help them, many instances it was to find a job, in many instances I found jobs for the former father, I have three girls who married the father of the baby they had as an unwed mother. These services I feel are part and parcel of being a physician, and it is the reason I am interested in the care of unwed mothers.

It is not a package that comes right down the line as being a mechanical baby deliverer.

SENATOR CHRISTENSEN: With reference to this proposal for amendment of the statutes, do you believe if that amendment were adopted it either would inhibit or proscribe that type of consultation which you undertook, as you say in this informal clinic that you established?

DR. McNEIL: Yes, it would very definitely inhibit this. It would so restrict us that we wouldn't -- we would be obviously -- the statutes would imply that we were not supposed to do this, and this inhibits people. Whenever you say you are not supposed to do this, automatically you don't volunteer to extend yourself in this direction. And this requires considerable extension of the physician.

He doesn't get compensated financially for this type of service.

SENATOR CHRISTENSEN: Is there any other place

that an unwed mother could possibly go and obtain the same type of consultation and assistance such as you had in this clinic, other than from a physician?

DR. McNEIL: Well, I don't think so, sir, and that is why I did it, and that is why I did it for \$1.00, because I knew these girls had just come out of an experience which left them destitute and, on the other hand, I couldn't have them coming for nothing because they would come just because they had no place else to go, and it was warm, and maybe I would give them a cup of coffee, which I do in the office.

But I wanted them to have some financial responsibility to me for this visit. If they didn't pay me cash, I never pursued it very far. But they understood there would be a payment.

Now, in my training, I didn't go to work until I was 36 years old. I spent this time in essence training and in the air force. And in my training I spent times in clinics all over. And I never saw a clinic of any kind that could give this service because clinics don't have consistent consultation with the same doctor with the obligation to be there at any time that you pick up the phone and this is it. And this is what is important in the personal touch to the practice of medicine, and these girls, more than anybody in the world, need a personal physician.

SENATOR CHRISTENSEN: Did you encounter in the course of your treatment or consultation with the unwed mother any feeling or belief which would prevent them from following advice to go to a clinic of any kind? I mean, an adoption agency, or any social agency, something run by the community, whether it be the private agency or the County Adoption Agency, Bureau of Adoptions?

DR. McNEIL: I don't quite follow the question.

SENATOR CHRISTENSEN: I mean, at any time did you encounter in talking to any of these unwed mothers, confronted with her own problem, a reluctance on their part which you would have to overcome to get them to go to, say, the Bureau of Adoptions?

DR. McNEIL: Yes, sir.

SENATOR CHRISTENSEN: Or to the Catholic Society, or Catholic Daughters?

DR. McNEIL: This is not an unusual problem. It is not restricted in this sense to unwed mothers. We have the same problem of getting a patient to go to a psychiatrist. They have come to their physician who they have found -- who they have settled upon for the solution. And they expect this solution from him. That is why they came to him. Then when he tries to transfer them to further investigation - and they always fear this word "investigation", fearing a probing into the background, whether it is real or unreal is not important - the patient feels, "I have told you that I am pregnant, I have told you that I am not married, I feel ashamed of this and I don't want to have to tell anybody else about this. Let's get something done about it."

SENATOR CHRISTENSEN: In other words, they feel that they would be confronted with the usual thing when they go to the usual agency, they have to fill out an application and have to give certain information, go through a certain routine which, obviously, you in your own private practice would not require? At least, if you did, you would adapt it to the particular person involved?

DR. McNEIL: That is right, sir. It is a natural instinct. We don't, when you apply for a passport, like to fill out the form. You would like to pay an extra \$4.00 and have them give you a passport, not fill out this long thing and tell them



where you did what and why.

And people when they are in trouble feel more strongly about this than at any other time.

SENATOR CHRISTENSEN: Doctor, on another point, there has been testimony here given that with regard to certain exorbitant fees and certain other conduct in connection with placement that the facts have been disclosed to the County Medical Society and nothing has been done about it.

Would you care to comment on that?

DR. McNEIL: Yes, sir. This is a little bit difficult to concisely comment on. As I said in one statement that I made, we hear a great deal about who has done this and who has done that, and yet we are not in a position to find proof for this.

The County Medical Society has recently settled a \$2 million suit for a person that we denied membership to because we didn't feel his ethical standards were satisfactory. We settled it because we couldn't fight it. We spent many thousands of dollars fighting this.

This is not a secret. It was in the headlines in the paper a few years ago. The fact that we settled it may not be common knowledge, but anything that is done in court is common knowledge.

So the medical profession, the Society, is in a position that unless someone can be proven to have done something wrong, we are in a position of depriving them of the right to practice medicine by rejecting him from membership and face ourselves with the same thing.

And the two people that I know of who were indicted, one was not a member, as I understand; the other one was not convicted.

Now, if the judge and jury of the law of the

land doesn't convict a man, the Society, the Medical Society itself, is not on tenable grounds to say "You did something wrong."

Now, the Society doesn't condone this, and I feel quite strongly that they should, the local Society as well as the state Society, announce to the public that we don't condone the things for which they were indicted. But we can't punish anyone that the state won't punish.

SENATOR CHRISTENSEN: Doctor, do you know whether or not the Medical Association, insofar as the Society, discipline itself, it can oppose apart from the conviction of a crime, or various kinds of unethical or improper practice, has undertaken any action whatsoever in connection with the matters related to them?

DR. McNEIL: Sir, I am Chairman of the Board of Trustees of the County Medical Society. I asked this question specifically of our legal counsel and he said that, in essence, what I said; one man was not a member, therefore he is not under our jurisdiction. One man, his case was pending, and depending on the outcome of the trial, the legal advice as I understand will be given to the Society that as long as he has not been convicted, we have no control over -- we have nothing which to chastise him for.

SENATOR CHRISTENSEN: Doctor, you are fully familiar or know that facts in a criminal case must be proved beyond a reasonable doubt and to a moral certainty so that 12 laymen have an abiding conviction of the guilt of the defendant. That same rule does not apply in an administrative hearing, does it? You are familiar with that, that that degree of proof, if an act were a crime, it still might amount to an unethical practice? Do you know whether the Society proposes to do anything about the facts related to them, irrespective of whether the man is found guilty or not guilty of a crime?

DR. McNEIL: I don't know whether the Society intends to or not. I know that nothing has been done, and the action is pending, and our legal advice from our attorney has been just what I said, that here we stand.

And as I said, the bitter experience, we had absolutely perfect grounds for excluding this unethical practitioner from our Society because everyone in town knew he was not living up to ethical standards, and it cost us \$100,000 to defend and settle. And this is a bitter pill to swallow.

The state law apparently was upholding this man's position. If the state is going to treat us this way, it is a little bit difficult to get rough on someone.

SENATOR CHRISTENSEN: Do you think it would be a fruitful field of investigation for the Legislature to undertake to amend the Medical Practice Act in such a way as to permit disciplinary action to be taken where the County Societies themselves, or the Board of Medical Examiners, are reluctant to do so?

DR. McNEIL: As an officer in our local Society, and as Chairman of the Committee of the state, I would be a little bit reticent to recommend a revision of the law. If I were emperor, I certainly would see to it that such protection were given societies who did chastise members if they could prove their point.

SENATOR CHRISTENSEN: Don't you believe it to be the duty of the Society if it knows of the existence of certain of these practices and feel that they are prohibited from doing anything about it under the present state of the law to make suggestions as to an amendment which would allow them to do so?

DR. McNEIL: I am not familiar enough with the law to know whether or not we are permitted, sir. That is the



problem. And I think if I were, that I would probably find that we are not prohibited, but we are deterred because, in this case that I speak of, we took this to court many times, and I don't understand legal action at all, but every time we got to court we had the thing practically whipped, and the court would say, "Well, we grant a stay. We grant a demurrer." Whatever they do. They kept helping this man carry this suit for these many years.

And as I said, this was a deterrent. I don't know whether the law would actually prohibit us from taking action, but this experience in this Society has been a great deterrent.

SENATOR CHRISTENSEN: Is it possible that the opinion of your legal counsel was to the effect that it would not be particularly wise to institute any such proceeding now in view -- at that time, rather, in view of the pendency of the litigation, and to defer any decision as to what should be done until after the determination of guilt or innocence was made?

DR. McNEIL: I think this could be very real.

SENATOR CHRISTENSEN: In other words, if I understand it, then, the matter is not foreclosed as to further action by the Medical Society?

DR. McNEIL: That is right, sir. It is not.

SENATOR CHRISTENSEN: That is one of the contributions this Committee might have made, is to have at least a written record made of Judge Koenig's testimony here yesterday in which he referred at length to certain specific instances, not mentioning names, in connection with the placement and obtainment of fees in connection with placement, to both doctors and lawyers.

With the availability of that record, do you believe that the Society would be willing to or desirous of undertaking any action, or at least to study the transcript for

that purpose?

DR. McNEIL: There are two things that I would like to say, sir. In the first place, if this is available to me, I will see to it personally that the Society does consider this. And as long as I am Chairman of the Board, which is 26 more days, why, I can see to it that it is done.

Now the second thing, sir: I think that the position of the doctors must be defended in some respects on this very thing. I, for example, know of a man who adopted through an agency and he says it cost him \$5,000 for the adoption.

Now, there was no doctor fee involved in this \$5,000 that he paid.

The question in my mind is how much is an exorbitant fee? This man, \$5,000 was less than a week's income. He didn't think this was very much.

I don't have patients that earn this kind of money. But I know people who do. And so, if you charge a person who is earning \$1,000 a day, you charge him \$500 to deliver a baby, this is nothing. I would have to know names of these people who paid \$3,000, or \$2,000 for this to know whether this was an unusual fee for them.

SENATOR CHRISTENSEN: Apparently those are matters of fact which would be presented in any particular case. I mean, at least there is available a number of cases, which the Judge referred to here, which the Society could pursue if they felt so inclined.

As I understand it, the Society intends to do so?

DR. McNEIL: I will see to it that this is done.

SENATOR CHRISTENSEN: There has been also considerable testimony here, without mentioning specific names in all cases, in connection with some out-of-state placements, that is, placements in states other than California of children

that purpose?

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SENATOR CHRISTENSEN: There has been also considerable testimony here, without mentioning specific names in all cases, in connection with some out-of-state placements, that is, placements in states other than California of children



born in California. Apparently with such a basis confined to a few doctors, and a few lawyers, which might lead to the belief that there might be some arrangement, a ring, or a working agreement among them, do you know of any such that exists with any members of the Society in Los Angeles County?

DR. McNEIL: I specifically know of none such. I think that there is a second interpretation that should be given to some of these things, and I cite, for example, a classmate of mine who had a close friend in Atchison, Kansas, which is a small town, who, many years ago, 25 years ago, found himself involved with a secretary. He sent the girl to California. I took care of the baby, delivered it, and arranged for its adoption through an agency.

I am sure that in Kansas this would be considered a pre-arranged, out-of-state placement.

But the reason that I was involved is because my roommate from medical school knew that I was in California and he had to get this girl out of Atchison, Kansas, because it would have been a scandal. And I think that a lot of times where, if I want something, for example, in any direction, I go to someone who I know is in this business. If I want to get a movie actress to go to a party for a benefit, I go to Cornwall Jackson, who used to be Vice President of J. Walter Thompson in charge of radio.

If I want to get a traffic ticket adjusted, I go to see Roger Arnebergh, or Judge Roger Pfaff. They are both my friends. Incidentally, they won't do it. But, if I have a problem with an adoption, I go to Walter Heath, a very close friend of mine. He is in charge of the County Bureau of Adoption.

These people are specialists in their field. I think when a doctor or attorney has friends in a field he has a tendency to have people gravitate toward him for these problems.

I do this. I have unwed mothers come to me because they know I will take care of them. They know I will take the time, and I want to do it, and other doctors won't do it because they are too busy or don't care for it.

We don't call something a ring when it is merely the matter of availability for service.

SENATOR CHRISTENSEN: There have been a number of words used. Perhaps you might call them scare words, such as "Moppets on the Market", which has been the subject of articles in the Yale Law Journal and other articles.

Do you know of the existence of any such ring in this county?

DR. McNEIL: No, sir, I don't. And I have reason to believe that if there is such, it isn't as large as it is supposed to be. And it certainly isn't widely known, either among my friends who are attorneys, or doctors, because it is not at all unusual for us to have someone call and say, "Look, I am stuck. A gal who is almost ready to have a baby walked into my office today. We have no financial arrangements, we have nothing. What can I do?"

Now, I am not the first person they call. They have called other people. And they say, "Well, I talked to an attorney called Gus Mack, who happened to call me just recently with this very problem. I talked to him and he says, 'I don't know what the answer is, but call Bob McNeil. He probably knows.'"

He did. I sent the girl to the County Bureau of Adoptions who took care of the situation very nicely. But if there were a ring around, certainly somewhere before this girl got nine months pregnant somebody would have gotten ahold of her and shipped her into this ring and she would have had a \$3,000 adoption.

SENATOR CHRISTENSEN: Do you know of any connection between any activities in placement of children in conjunction with any abortions? Or those doctors who are engaged in abortions?

DR. McNEIL: Well, no, sir, I don't know of any connection there.

As a matter of fact, to be real about it, I don't know anyone in this town who is doing abortions. The market has been closed up here by the State Board of Medical Examiners for several years, and those people that I have seen who have been aborted come in from Mexico.

Now, I see them because they go to Mexico and Tijuana and get aborted, the results are not good, they come back to their local doctor who is scared to death because he doesn't know how to take care of a post-abortal complication; because I am an expert in the field of obstetrics and gynecology, I receive some of these. And I have never had one in the last five years who has been aborted in Los Angeles. They all have been aborted south of the border. I know of no connection between abortions and adoptions.

SENATOR CHRISTENSEN: Doctor, how many members of the Medical Society are here practicing in the county, to your knowledge?

DR. McNEIL: About 8,000.

SENATOR CHRISTENSEN: And how many, do you know, approximately, who are not members of the Society?

DR. McNEIL: If you include the practice of medicine in the liberal sense of the word, it is about another 8,000. About 50 percent of the doctors, 50 percent of the people practicing medicine in Los Angeles County, are members of the Society.

But if you include, when I say this ancillary group, I am talking about the optometrists who are practicing



eye medicine, naturopaths, chiropractors, osteopaths, and all other forms of medicine.

SENATOR CHRISTENSEN: I mean that are physicians and surgeons.

DR. McNEIL: You mean M. D.'s?

SENATOR CHRISTENSEN: Yes.

DR. McNEIL: I don't know that figure, but I think it is about 25 percent.

SENATOR CHRISTENSEN: According to the testimony here, I can't interpret the actual number, but I would say you could count on the figures of both hands those who have been referred to as engaging in some of these irregular or questionable placement activities, both in regard to exorbitant fees and other reasons. So that actually, it is a rather minute proportion of those who are actually engaged in the active practice who would be involved in these placement activities?

DR. McNEIL: This is my understanding of the problem, that I have heard it said by people that I think know, and my own experience backs this up, that if you could eliminate 25 people, you could eliminate the whole problem in all professions.

SENATOR CHRISTENSEN: You feel, then, that at least the Society here has an open mind in regard to taking further action in regard to what might be developed at this hearing?

DR. McNEIL: Yes, sir.

SENATOR CHRISTENSEN: Thank you.

CHAIRMAN RATTIGAN: Doctor, in your written statement, Paragraph 6, Page 6, it refers to the prospect of establishing a board of appeal to receive applications from rejected adoptive parents, citing your opinion that this impartial review would assure that no one agency could deny an appropriate

couple the opportunity to adopt a child.

In your experience, have you encountered adoption agency practices which are unrealistic, well, perhaps I shouldn't put it that way, but in your opinion are there prospective adopting parents who are denied the opportunity to adopt a child from an agency?

DR. McNEIL: Yes, sir, I have a case in point that occurred within the last week. A woman of 40 and her husband of 43 came to my office as a consultation. They said that they had another doctor who was offering them an independent adoption, and that this baby was due any minute. They had some misgivings about going through an independent adoption, and in this instance, if it were to be done in the manner in which I thought it was, it would be a placement, an illegal placement.

And they said two years ago, the woman was 38, "We applied to an agency. We interviewed and paid a fee and we have never heard of them since, positively or negatively, as to whether we are going to get this baby, a baby, from them. We have contacted them several times and we have received no definite reply. They always say our case is pending. They won't tell us whether or not we are acceptable."

There is a questionable medical background in the case of the woman. She is a case of arrested TB, of 14 years standing. This, perhaps, is a sufficient reason not to adopt a baby to this family. But I feel strongly that this group should have the privilege of going to someone and saying, "Look, this is our petition. This is the agency position. Apparently they have denied us. Is this right?"

There should be a third party that someone can go to for this reason. And this is an isolated case, but it is a case in point at present.

CHAIRMAN RATTIGAN: Do you find in your practice and possibly by reason of your interest in this field that you get a lot of unwed mothers?

DR. McNEIL: I think proportionately I get, proportionate to the amount of obstetrics that I do, I get more than most people do.

CHAIRMAN RATTIGAN: Any further questions?

SENATOR FISHER: Yes.

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: Doctor, as I understand it, what you are saying is that like there are specialists in different fields of law and different fields of medicine, that there is a normal gravitation towards those who have a confidence in dealing with this situation and that, as I understand it, you consider it an unfair generalization to say that because some people have more than others of this type of a case, in the case of an attorney, or patients in the case of a doctor, that it is unfair generalization to say that there is a ring of some sort, an illegal ring?

DR. McNEIL: Yes, sir, that is my point. We all gravitate to a certain field within our own specialty, particularly within a big city. Even in the field of obstetrics, for example, there are men who specialize in infertility, and those who don't care to do it. And in this instance I think that in a city we find super specialization.

SENATOR FISHER: Isn't it true that the medical profession was involved in this human relations problem long before there were independent agencies, licensed specific agencies for this purpose, so far as you know?

DR. McNEIL: Oh, yes, sir. My father, who has been practicing here since 1899, before they had any kind of a law, used to adopt illegitimate babies as best he could because



there was no facility.

When I first started to practice there were two agencies, Native Sons and Daughters of the Golden West, and The Childrens Home Finding Society, I think. So before that there were almost no facilities. And in 1940 I remember two or three problems that I had when I first started to practice, and I didn't at that time, I wasn't a so-called specialist in this field, I didn't have all the contacts that I do now, there was no place to turn for a lot of these problems.

SENATOR FISHER: It is conceivable both in your profession and the profession of law that there are some who transgress the rules of the profession itself in pursuing the practice, either in relationship to adoptions, or ambulance chasing for orthopedic cases; all kinds of such situations could arise wherein illegal activity occurs growing out of what is essentially a proper and legal practice of medicine in your case?

DR. McNEIL: That is very true.

SENATOR FISHER: And there ought to be, in your mind, a sharp distinction between those illegal practices, capping, steering, and so forth, a sharp distinction between that and the legitimate practice of medicine, including helping those people who find themselves in this situation?

DR. McNEIL: That's right, sir. And in this line Senator Christensen, I think brought out this point; that sometimes we are -- society is brought into a position where they are afraid to criticize or chastise people because of the repercussions we get. And in this instance I think if the society were to be freed from any such fetters, we might take the same positions that our boards in the hospitals have where we deny surgical privileges to people who are incapable of doing surgery and criticize people who do unnecessary operations.

Perhaps this could be brought up to the Society if we were free of these fetters we feel we are under.

SENATOR FISHER: It has never been your opinion that when others were licensed to do those things historically done by doctors and lawyers, you didn't feel this ousted your right to practice that part of your profession, did you?

DR. McNEIL: No, sir.

SENATOR FISHER: I realize that is the legal opinion, and I notice a lot of people before this Committee and the Assembly Committee practicing law without a license, and telling us what is legal and illegal. But I am asking you your curbstone opinion.

You don't feel it has ousted your right to practice your profession in this regard as well as others?

DR. McNEIL: No, sir.

SENATOR FISHER: Thank you.

CHAIRMAN RATTIGAN: Any further questions?

DR. McNEIL: Senator, may I make one observation, please, sir?

CHAIRMAN RATTIGAN: Go ahead, Doctor.

DR. McNEIL: In our recommendations that we have made in our formal statement there is one thing that I would like to emphasize from a personal standpoint, and I think the concept has already been presented to the Committee about the physician should be a mature individual, an obstetrician who is sincerely interested in this girl's problem.

It is the common business understanding among most people that obstetrics, being simple, can be done by anyone. And I think that if anything should be encouraged, it should be that all agencies and all facilities for delivering unwed mothers should be financed in such a fashion that the best physician can

be provided to these girls; that they should be not referred to clinics to save money for other purposes within the cost of their care. I think that the most expensive part of the care of an unwed mother should be the medical care, not to depreciate the other services which are necessary, but they need the best because they are the most in trouble.

CHAIRMAN RATTIGAN: Any comment or questions from the Subcommittee? Dr. McNeil, we appreciate your coming and giving us your testimony. Your written statement will be incorporated in the record. Thank you very much.

DR. McNEIL: Thank you, sir. And Senator, you will see to it that we as a Society will get this written statement so that we can act on it, or how do I get that?

SENATOR CHRISTENSEN: Well, there will be a written record available through the Committee, and I would think that from what has been developed here that the Society would be interested in procuring one. The Reporter will prepare a transcript of everything.

DR. McNEIL: Fine. Thank you, sir.

CHAIRMAN RATTIGAN: Mr. Burch, will you identify yourself for the record, please?

MR. CHARLES E. BURCH, JR.: Yes. My name is Charles E. Burch, B-u-r-c-h, Jr. I am an attorney from San Diego and I am presently the Chairman of the Committee on Adoptions of the State Bar of California.

I might say that also in the room today with me is Mr. J. E. Simpson, who is the member of the Board of Governors of the State Bar of California charged with the responsibility of liaison on our Committee.

May I say, gentlemen, I have been authorized by the Board of Governors of the State Bar of California to appear before you and to present the factual matters involved in the



most recent study and report of the Committee on Adoptions of the State Bar. Copies of the complete report dated June, 1961, have been filed with your Executive Secretary. It will be printed in the forthcoming issue of the State Bar Journal, the November-December, 1961 issue. I shall not repeat in this statement the material therein contained. However, a partial summation and some further word of explanation is probably in order.

First: At this time the Board of Governors has not acted upon the report other than to accept the filing thereof and to authorize its publication in the Journal and with our State Legislature.

Second: Our Committee has now been constituted as a standing Committee and charged with the responsibility of studying all facets of adoptions, including independent and agency procedures and intra-agency rules and regulations pertinent thereto.

We are requested to review and recommend to the Board of Governors affirmative legislation concerning the role of attorneys in adoptions. It is our understanding that we are to carry out the mission assumed by the State Bar in its recent expression of willingness to cooperate with the State Legislature in disentangling as much as possible some of the kinks which have been introduced into this area of our law.

Third: At this juncture, while policies and mechanics for implementing thereof are yet in the formative stage, the Board of Governors has reaffirmed its position again, at its November, 1961 meeting in San Francisco, favoring the retention in California of independent adoptions. This is the same stand the Board took to our knowledge as far back as 1954. No serious challenge of this procedure is recalled prior to that date. Nothing has occurred to change this opinion of either the

State Bar or its Board of Governors since that date.

Fourth: The membership of our Committee changes. The current report (June, 1961) was the result of differences of opinion being carefully weighed with certain compromises evolving. Some strong dissents are set forth. Recently added members of our group have not as yet had the opportunity of expressing their thinking.

We state our understanding of the so-called controversial issues with full realization that there may be some disagreement as to such matters. However, we are sufficiently cognizant of the over-all picture to know and represent to this hearing a pronouncement which, with very little exception, represents the views of the Committee.

While the scope of our Committee work is now greatly enlarged, the assignment for the past several years and in particular the last year just ending, has been confined to checking over proposed legislation in this field and studying the role of the attorney in independent adoptions. This commenced with the State Attorney General's opinion of January 15, 1954 construing Section 224q, California Civil Code, and then was emphasized by indictments in Los Angeles County in 1960 arising out of asserted "black market" activities.

The factual study and review of our Committee embodied all points of view, independent, agency, and those expressing the belief that both were necessary.

There is no doubt in our minds but that there is a definite, in fact, necessary, place in our system of jurisprudence for both forms of adoption procedures. Where the natural mother desires to more fully participate in the transfer of parenthood by the placing of her child with adoptive parents of her own ultimate choice, she of necessity proceeds independently of licensed state agencies.

On the other hand, if she prefers to relinquish her child to someone else to make the placement of their choice, she must then act through a duly licensed agency under the State Department of Social Welfare.

To say, however, that the natural mother, in pursuing the first course, must proceed on her own without any guidance or assistance, especially legal help, except at the risk of violating some law, is to suggest that she make important decisions under emotional stress in a sort of mental vacuum. This is absurd.

What we have just alluded to points up the first of the three basic categories, all controversial in nature, into which our studies and recommendations have been directed. These are, first, placement of children for adoption; second, conflict of interests; third, fees, costs and expenses of adoption.

As to the subject of placement, our findings and recommendation on this subject is that while it is not conceded that under present law a duly licensed attorney may not assist a natural mother in placing her child for adoption, clarification should be made to make this certain. This simply and logically enables the attorney to practice with certainty in the field we have already determined as a necessary one. The contention that attorneys are not academically qualified in this field is without any supporting evidence. The contrary has been widely demonstrated.

Second, conflict of interest: The usual rules of professional conduct apply on this subject. Where any possible conflict of interest manifests itself, the attorney is duty bound to act accordingly. Canon 6 of the American Bar Association is applicable and the attorney should advise the party not represented by him that he, in fact, is attorney for



the other party.

Fees, costs and expenses: Although some of our Committee resented the invasion into our professional relationship of court controls of fees, costs and expenses of adoptions, the majority felt the situation to be similar to guardianships where such control does lie. The Los Angeles Superior Court Judge Ben Koenig testified before our Committee that this practice would eliminate most, if not all, of the problems insofar as attorneys are concerned.

Our Committee has reviewed oral testimony of the following people:

Walter Heath, Los Angeles County Bureau of Adoptions.

Mrs. Lucy Schafer, Adopted Childrens Association.

Mrs. Doris La Violette, Adopted Childrens Association.

Mr. David K. Leavitt, Attorney, President of Independent Adoptions Association, Inc.

Dr. Albert J. Rosenstein, Los Angeles author of recent survey on adoptions.

Miss Lucille Kennedy, Chief of Child Welfare Division, State of California.

Mr. Ruddy Michaels, Attorney for said Division.

Mr. Richard L. Mayers, Deputy Attorney General of California and author of the January 15, 1954 opinion relating to the subject at hand.

Superior Judge Ben Koenig, Los Angeles County Adoption Department of that Superior Court.

Miss Jean L. Waller, Los Angeles Deputy County Counsel.

Mr. John W. Dickey, Los Angeles Deputy District Attorney.

Much written material has likewise been studied, including answers to questionnaires sent in 1958 by the State Bar to lawyers practicing in this field.

This is pointed out to demonstrate the background upon which our Committee is expressing its determinations.

Survey statistics presented to our Committee sustained the conclusion that the general results in terms of family happiness and psychological satisfaction favored independent adoptions by a substantial margin.

The only documentary evidence brought to our attention on the subject of monetary irregularities was a compilation of 87 cases, drawn from 5,000 cases prepared by the Honorable Judge Ben Koenig of the Los Angeles County Superior Court, Adoptions Department. These cases did not reveal any transactions considered by the Committee as unreasonable or improper.

Total per case payments, including medical, hospitalization, expenses, fees and costs of this group ran between \$500 and \$2200, averaging about \$1400 per case. No unusual attorney fee allocation was shown. Three were fixed at \$1,000, the highest. Most of the fees were less than \$500.

Within the limits of human tolerance, it is our purpose to remain objective in this matter. To that end, and in recognition of the fact that a consensus of worthless opinion is a worthless consensus of opinion, we have conscientiously endeavored through exhaustive and exhausting inquiry to separate fact from fiction and familiarize ourselves with every aspect of this problem. Our investigation and deliberations have led us to the inescapable conclusion that both agency and independent adoptions must be preserved.

We do not subscribe to the theory that unwarranted and unfounded accusations, however sensational, constitute

adequate justification for sweeping legislative changes. We do believe that there is a need for clarification of the law in this area.

So long as adequate machinery for enforcement exists, however, we cannot and will not condone unwarranted curtailment of independent adoptions or, for that matter, of agency adoptions, simply because occasional abuses may occur or some attorney or agency representative may violate his duty or office.

Our Committee and the State Bar appreciate your courtesies and patience and will continue to do all within their power to assist you. We commend your efforts in this very important and challenging field of legislation.

That is my written statement, Mr. Chairman and gentlemen of the Committee.

I should make this further statement. I, of course, was present yesterday and heard the remark to the effect that the membership of this Committee was of a type that might be subjective rather than objective in its attitude. I should like to point out that the only possible people who are on our Committee and who would fall into that category would be Martin Dinkelspeil, who was the attorney for the Native Sons and Daughters of the Golden West, and Miss Nancy Keppel, who was working with the Welfare Department in the northern section of our state.

Mr. Washburton, who was the Chairman of the Committee immediately preceding me, told me that he had, as he recalled, two adoptions in his entire experience. I personally have had one. It was an agency adoption, I might say. I have had several step-parent adoptions.

The rest of the members of our Committee, Mr. Denison has had a few adoption matters, but Mr. Kirby, Mr.



Doolan, Mr. Wapshaw, Mr. Goodrich and Mr. Simpson, who is in the room here, I don't think has ever had an adoption case.

Most of us have nothing at stake, shall I say, in this matter other than our interest in trying to see to it that the State Bar assists the Legislature and does all that it can in the solving of a problem which we realize is quite great and that is the reason I am here today.

Now, perhaps I should further add that the nature of the knowledge which I have on this subject emanates from my having sat as you gentlemen are sitting here listening to many people give their very many varied experiences and feelings and interpretations of the law and the facts, and if I can be of any further assistance to you in going into the detail on that, I am ready to try. I probably should - well, I will stop for the moment and see what questions come.

CHAIRMAN RATTIGAN: Any questions? Senator Christensen.

SENATOR CHRISTENSEN: Mr. Burch, on Page 5, the last page of your statement, in your conclusion you state that the State Bar, as reflected by the opinion of the Committee, cannot condone unwarranted curtailment of independent adoptions simply because occasional abuses may occur or some attorney or agency representative may violate his duty or office.

We have heard testimony here which might lead to the conclusion that some attorneys have engaged in some questionable practices, at least.

What did you have in mind when you referred to "some attorney or agency representative may violate his duty or office"?

MR. BURCH: My reference there, Senator Christensen, was to a letter received by the State Bar of California on July 7, 1961, from the Honorable William L.

Blankenberg, Judge of the Superior Court, Department 1, of Napa County wherein he stated as follows: "To the State Bar. Dear Jack."

This letter was addressed to Jack Hayes, the Secretary of the State Bar.

"I am writing to call your attention to the practice which I feel should be given some thought by the State Bar. Our clerk's office has noticed an increasing number of agency adoption proceedings being brought by the petitioners in propria persona. One aspect of this practice is that the court is called upon to go over the papers as carefully as though it were an attorney preparing them in the first instance. More important is the fact that the proceedings lack the guarantee of an attorney, that the work will be done in compliance with statutory requirements and to accepted legal standards.

"Last week a case involving the San Francisco Welfare Department as the adoption agency came before the court. When I reviewed the cases prior to the hearing I discovered a petition which I felt fell considerably short of what a petition should contain. On discussing the matter with the petitioners I learned to my surprise that the case worker had urged them to prepare the papers themselves, indicating that the services of a lawyer would not be necessary.

"I feel that this conduct on the part of the agency was a disservice to the petitioners, the adopted child, and the court. It is my understanding that similar recommendations have been made by other

adopting agencies, and I hope the Bar will move promptly to put a stop to this practice.

"It is certainly an unfortunate happening to have the parents on the threshold of a successful adoption only to find an unnecessary delay dashes their hopes temporarily.

"Henceforth in Napa County I anticipate asking the clerk to refer all such cases to the court at the time of the filing of the petition so that I will not again be placed in this position. I will be pleased to discuss this particular case with an examiner from the State Bar if you will make the advance appointment, and also to ask our clerk's office to cooperate with you in finding the names of other similar cases which I understand there are perhaps a dozen within the last year or two."

This letter was referred to me by the Board of Governors for action. I acted upon it and, pursuant to that action, the State Bar officials were informed by the State Bar of California as follows:

"The Board hereby approves the recommendation contained in the letter from Charles E. Burch, Jr., the Chairman of the Committee on Adoptions, dated July 11, 1961, as follows: That the Board of Governors direct the Secretary of the State Bar to write a letter to the State Department of Social Welfare suggesting to it that it be made a part of their policy disseminated to all agents and workers involved in the program the principle of suggesting that an attorney be engaged by the adopting parents to assist them in any and all proceedings as needed, that the employing of an



attorney not be discouraged due to the pitfalls which may occur should the parties seek to proceed on their own and without competent legal advice and assistance."

SENATOR CHRISTENSEN: Do you know what, if any, action was taken by the State Department of Social Welfare?

MR. BURCH: No, sir, I do not.

SENATOR CHRISTENSEN: Has there been any follow-up to ascertain whether any action has been taken?

MR. BURCH: Not by my Committee, and it wouldn't be my field to do that. I don't know whether the Secretary of the State Bar has. I doubt if he has.

SENATOR CHRISTENSEN: Was your letter acknowledged? Was there any response made when you sent that communication to the State Department?

MR. BURCH: The letter went from the State Bar Secretary's office. If there was an acknowledgment to that office, I am not aware of it.

SENATOR CHRISTENSEN: Do you know of any other instances such as referred to by the judge up in Napa County?

MR. BURCH: Not in my capacity, in which I am appearing before this Committee, as Chairman of the Committee on Adoptions.

SENATOR CHRISTENSEN: Would you care to change your hat and state whether or not there is any knowledge you have of any other such, of any instances?

MR. BURCH: I think that the errors of omission that occur on the agency side would just about fall into the same category as I believe they exist on the independent side. I feel that any system that is adopted by humanity is subject to the frailties of humanity.

I would take the position of charity toward the

agencies. I think they do a good job by and large, and I think they are trying to do a good job by and large. And I think that the things that do happen are not subject to warranted criticism, certainly the State Bar is not going to stoop to the same kind of tactics of publicity as seems to be falling into the other side and, Mr. Christensen, I -- in all sincerity, the errors that I know of would be, in my opinion, inconsequential.

I could sit here and name them. For instance, there is a habit among agencies to some way or another funnel all of the cases to a particular group of attorneys who are more familiar with that type of work. I see nothing particularly wrong with this.

SENATOR FISHER: That could be called capping and steering, couldn't it?

MR. BURCH: It might be called capping and steering. The accusatory finger is pointed when it falls on the independent side. It happens just as often in the instance which, for instance, in my own firm in San Diego, where my partner was personally acquainted with a young Navy lieutenant and his wife who wanted to adopt through the agency, and it was suggested that they would have to go to a particular attorney rather than to their friend, my partner, because if they went to him, it would take probably a year or so to consummate, whereas the other attorney would do it in much shorter time.

Now, to me this seemed to be improper. But again, I think it is a case of error in judgment, perhaps. One of those things that wouldn't cause me to stand up here and say we should get rid of the agency system of adoption just because these isolated things occur.

I have heard of errors in judgment on the part of agency placements where the people who were the adopting parents didn't turn out to be as was anticipated the type of people that

they should have been. I suspect that the agency was in good faith in that case in the beginning, and it was just a case of where the thing didn't work out right.

These percentages or figures that are pulled out and placed before you, that 48 percent are this and 24 percent are that, and 10 percent are this, as far as I am concerned, don't mean a thing unless you know all of the factual background that go into the coming out of this particular percentage.

I understand Dr. Rosenstein is going to testify before this Committee. I suggest that you pry into the background that was engaged in by him. He explained this in our Committee as his 400 page report. Some of us have waded through it. Others of us have not. You will find some very interesting material in there, and the manner in which he arrived at his evaluations.

I think it is worth looking into.

Just to pull these figures out is not very helpful.

SENATOR CHRISTENSEN: I assure you that the Committee is very, very grateful for your suggestions as to how we should proceed in this matter. But is this the first indication in your paper of any abuses that might have existed insofar as agency adoptions?

MR. BURCH: Our Committee has not been charged with the responsibility, up until just August of this year, of doing anything except to investigate and recommend to the Board of Governors for its consideration a policy on the matter of the role of the attorney in independent adoptions.

In other words, our field really has been narrowed down to that.

SENATOR CHRISTENSEN: So far, I may say that at least while we have been here in Los Angeles we haven't heard any responsible witness indicate that there should be an outlawing



or doing away with independent adoptions, although the inference may be such that by reason of abuses that apparently are alleged to have occurred in independent adoptions, that might be a proper question before the Legislature.

Pardon me, sir.

MR. BURCH: Excuse me, Senator. I think that what you are doing is a very important thing. I sincerely believe that it is quite necessary to clarify and to pull out into the field of certainty just what the doctor and the lawyer can do.

Now, I have had occasion to discuss these things with lawyers generally. There isn't a day goes by but what I get a telephone call from some part of the state because I happen to hold the position of Chairman of this Committee. I am supposed to have the oracle up here, and know just what a lawyer can do, and what a doctor can do. I don't have the answer. But what I do know is that there is a need for a spelling out and a clarification of just what attorneys can do within this realm of the word "placement" and what a doctor can do.

Dr. McNeil, I was very impressed with his thinking in this regard. I am sure he knows that the doctors have the same problem. They do in San Diego. I don't think we have any real problem in this State of California other than one localized area right here in Los Angeles County. But the fact that that problem is being publicized from this county is causing the practitioners in both the medical field and the field of law to be concerned, and rightfully so, because the attorneys are not - they are a profession, as you gentlemen know, subject to discipline and subject to disbarment, and they are concerned about their license to practice. This is a very important thing to them.

SENATOR CHRISTENSEN: Mr. Burch, just one further question. I would like to pose the same question to you that we

did to Dr. McNeil in connection with this proposal to amend the Civil Code, the placement statute, by including a prohibition against finding, procuring or referring, and whether or not in your opinion as a practicing attorney, and also as Chairman of the Committee, representing the State Bar, that would proscribe or inhibit the lawyer in performing his ethical duties towards his client in the event he was consulted by either the natural mother or the adopting parents?

MR. BURCH: Yes, Senator Christensen. I am afraid that it would. I think that the lawyer, even more than the doctor, if he is a little bit old-fashioned and feels that he should consult and assist his client in more than a strict technical legal sense, has to concern himself about just what he can do other than draw up a document and appear before a tribunal or a court.

Now, I didn't even realize until I got into this subject matter that the Welfare and Institutions Code makes it a misdemeanor for any person, which would include an attorney, to without first obtaining a license from the State Department of Social Welfare, engage in the finding of homes for children under sixteen years of age, or place any such child in a home, or other place, either for temporary or permanent care or adoption.

Now, as I read that section, and I do quite a little bit of guardianship work, and I do some domestic relations work where the problem comes up of "Where shall we place the child? Where shall the child go?" In a will it is not uncommon for a person to designate where the child shall be placed upon the death of a person, and if I as an attorney do any more than prepare a document on this subject matter and take it upon myself to do something which I feel an attorney should do, look into the matter, perhaps go out

and make the initial investigation as to whether or not this is the proper place to place a child, for instance, in a domestic problem, I am violating Welfare and Institutions Code Section 1620.

Nobody has seen fit yet, apparently, to attack that, because this doesn't seem to interfere with some of the things that, apparently, the people who are raising the objection are concerned about. But I call it to your attention that it is in our books, and it is clear. I don't believe that the inhibition lies.

I am of the school of thought that an attorney should still try to give his client the benefit of his training and his ability and his exposure to the problems of human nature, and his acquaintance with the impact of law upon human nature, and aid and consult these people in solving this problem, as does the doctor.

As I say, ours is a little bit more into this field that becomes questionable because we get into the philosophies and to the actual mechanics of carrying out the thing, whereas the doctor usually is confined somewhat to the physical, plus the mental status of the individual involved, the emotional problems.

I think that this long speech I am making here as an answer to your question is that the curtailment or the placing of the unnecessary inhibition would be a disturbance, definitely, to society and the people who are involved in these problems.

SENATOR CHRISTENSEN: I would like to pose a question. Do you believe an attorney could adequately handle a domestic relations problem that might come into his office if this statute existed, that is, the prohibition against finding, procuring, or referring a child for placement in a home?



MR. BURCH: Certainly it would raise a question, and if someone wishes to be technical and point the finger, they could more ably do so, because of this more prohibitive or inhibiting type of statute.

SENATOR CHRISTENSEN: Isn't it an attorney's duty to make recommendations to a court in that particular field?

MR. BURCH: Very definitely. Very definitely. And the court is usually quite interested in the recommendations of the attorney.

SENATOR CHRISTENSEN: Can the attorney very adequately make such a recommendation without an investigation and forming a conclusion as to what should be done?

MR. BURCH: As you know, Senator Christensen --

SENATOR FISHER: Mr. Burch, let me warn you, you are talking to a former Superior Court Judge. So be careful.

MR. BURCH: I think that judges have a way, after they have been on the bench, of knowing when an attorney walks in and presents a matter to them, whether they can depend entirely upon the presentation of the attorney or whether they need to go beyond that. I am not saying that one attorney, perhaps, is dishonest and another one is honest. I am saying that the judge knows by his experience which attorneys are experienced enough to be dependable in the area that they are undertaking to present to the court. I think that is the answer.

SENATOR CHRISTENSEN: No further questions, Mr. Chairman.

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: As your next to the last answer indicated to me, what you are saying is that the right to practice law which is, I guess, the second oldest profession, anyway, has included above and beyond the mere advice as to

legal technicalities the further duty of the attorney to advise his clients as to human relationships and as to general consequences of his actions in society? You are saying that in essence, aren't you?

MR. BURCH: Very definitely I am saying that, sir.

SENATOR FISHER: And to the extent that code sections such as the one that you referred to, or 224q might appear to restrict them, they would be restricting an attorney in his historic place in society, is that not correct?

MR. BURCH: That is correct.

SENATOR FISHER: Is it your view that any such implied repealer ought to be made specific if that is what it intended to do?

MR. BURCH: Very definitely. Of course, this gets into the field which we sometimes tread in with certain trepidation: The socialization of our society. Medicine has resisted it. The lawyers have resisted it to a degree. I feel that we are justified in having society check into and to investigate and come up with their recommendations concerning the deal that we are talking about, independent adoption placement of children; this we do not object to. This is a proper role of society.

But when you say that society is the one which must have the exclusive right to the processing of the field of adoptions, and that is what you do, the more you curtail and eliminate the possibility of doing things which are inherent in independent adoptions, where the individual must take upon himself to do the job instead of letting society take over for him, then you are more socializing our system, and the lawyers, as you gentlemen know, historically are of the school of thought that our country was founded upon the precept that society should step in only when the individual can't do a good job.

Now, we still believe that the individual can do a good job with the help and the assistance of the ethical doctor and the ethical attorney in this field.

I realize, and you will find appended to our main report a statement by Mr. Dennison, who has had a little more experience in this field than I have, - I don't know whether he has come in the room while I have been testifying - but he points out, and he has found a great deal of contact with the agency in this area, in the Los Angeles area, of course, the difficulty occurs, it is difficult to draw a statute in which you can actually draw a line of where an attorney can stop and where he can further -- further than which he should not go.

I predict that it is impossible to do this. It simply falls over into the field, Senator Christensen, that you talked about earlier. It is a matter of ethics.

I was interested in the comment of someone yesterday that it is not the stopping of the placing that they are concerned about. Because they think that is all right by other people. I do resent the statement that the attorney and the doctor and the neighbor and the notary public, I think that there is a difference between the attorney and the doctor and the neighbor, we are under definite inhibitions by our licenses to practice, and if we don't know what to do in this field, we better find out.

I am not contending that every lawyer who has a license to practice law is an expert in this field. I, for one, am not, except what I have learned. But I certainly am qualified, I feel, to find out the answers and my academic and basic training is such I think that if I elect to go into this field, I think I can do it.

That is why we contend the license that we have justifies our doing it.



SENATOR FISHER: Historically, then, you feel that the license to practice included rather specifically the right and the duty, responsibility, of advising people and helping them in the situation of the family relationships, including adoptions?

MR. BURCH: Yes, sir. I do, Senator.

SENATOR FISHER: Is it conceivable to you that an agency can advise a person adequately on the change in legal relationships that occur by virtue of adoption and thread the way clear through this complicated scheme of things without advising either the adoptive parent or the one placing the child out for adoption? Is it conceivable that that could occur without any of these persons being advised as to their legal rights and duties?

MR. BURCH: Well, I would hate to think that an adopting parent was not advised of the legal consequences in the way of inheritance, for instance, by virtue of this act of adopting a child. This is an important consideration, particularly to people who have considerable property.

The impact or results of an adoption proceeding is much further than just that of the people immediately involved. It involves the consequences to the families on both sides of the ledger, shall I say, and, as you know, the law was only changed recently in that respect.

SENATOR FISHER: And complicated legal relationships during this interim period.

MR. BURCH: Very definitely.

SENATOR FISHER: So any agency that purports to advise any of its clients, either the one placing the child for adoption or the adoptive parents, that gives advice, that would be practicing law without a license, wouldn't it?

MR. BURCH: Yes, I would say so, and with the

possible exception of sovereign immunity, they might lay themselves open to the late trend in our course for liability for misadvice.

SENATOR FISHER: Do you see anything in the statutes that permits an agency in an adoption matter to practice law without a license?

MR. BURCH: Do I see anything in the law --

SENATOR FISHER: In all of the statutes on adoptions and the licensing of the agencies?

MR. BURCH: Which, in my opinion --

SENATOR FISHER: Permits --

MR. BURCH: -- entitles the State Department of Social Welfare to practice law?

SENATOR FISHER: Or any of the licensed agencies who may not have the sovereign immunity?

MR. BURCH: Well, that is a very -- I would have to make a statement one way or the other on that, not being completely familiar at the moment with every law that is in the statute books.

SENATOR FISHER: You haven't seen any that would permit it?

MR. BURCH: I have not, no.

SENATOR FISHER: What is the citation on that Welfare and Institutions Code Section that you referred to?

MR. BURCH: That is Section 1620, Welfare and Institutions Code, and in particular Section (b) thereof.

In connection with this you would also have to read Section 1629, which makes it a misdemeanor for anyone to violate any of the prohibitions of Section 1620.

SENATOR FISHER: Well, I am personally acquainted with a lawyer who had a family involved in divorce proceedings in which the child was about to be institutionalized. This

attorney and his wife offered and finally did for the better period of a year take that child in essentially as their own ward. The lawyer offered to do that in behalf of himself and his wife to his clients.

Would that, in your opinion, have violated that section?

MR. BURCH: Well, the section is pretty clear as to how it reads. And it says "Engage in the finding of homes for children under 16 years of age or place any such child in any home or other place either for temporary or permanent care or for adoption."

The trouble about that is that Section 1629 says "Any person, association, or corporation that maintains, conducts or as manager or officer or in any other administrative capacity assists in the maintaining or conducting of any institution, boarding home or the performances of any services specified in Section 1620 of this Code without first having secured a license or permit therefor in writing, or refuses or interferes with the inspection authorized in Section 1621 of this Code, is guilty of a misdemeanor."

SENATOR FISHER: So we get, really, if we are going to be as highly technical as some would have us in this field, we fall between two stools. The attorney is the only one who can go into a court and do the things required, and the agency can't practice law, so nobody can do it, if you want to really be technical about it.

MR. BURCH: If you wanted to be real technical about it. I am sure this would be true. You see, what happens in these cases, as you gentlemen know, if a purpose of a certain kind is served by raising these questions, they seem to be raised. If the purpose isn't involved, it is not raised. That is the unfortunate, perhaps, conclusion that the Committee has come to.



I honestly and sincerely feel that this problem can be worked out so that, providing all of us will reevaluate our ideas about what is really needed by society, that there will be a definite place for both these systems of adoption that will go right along side by side and will accomplish the thing that we are all interested in accomplishing, and that is the betterment and welfare of our State.

SENATOR FISHER: Now let me ask one further question, following up the question I asked of Dr. McNeil.

Is it your opinion that there are or may be those in the practice of law who have violated the rules of professional conduct in the way they have proceeded as lawyers, having in mind specifically capping and steering, and those sections of the Business and Professions Code which prohibit that type of activity? Is it conceivable that some of the criticisms have been raised and attempted to be bottomed by those raising it on the purported illegality of independent adoptions, might more rightfully have been raised under these Business and Professions sections relating to the professional conduct of the lawyer in the individual instance?

MR. BURCH: Very definitely. We asked Judge Koenig, when he appeared before our Committee, why he did not present the matters to the State Bar that he was contending as being irregular in the proceedings before him. He said he didn't know why he hadn't. He hadn't thought of it.

I asked him if he realized that the Superior Court had just as much power and right and, perhaps, duty, to present cases of unprofessional conduct to the State Bar as did an individual.

SENATOR FISHER: As I read those code sections in the Business and Professions Code, there are two ways of proceeding. He could have referred it for disciplinary action

to the Bar Association, or he could have in fact referred it to the District Attorney for indictment for conspiracy to violate those code sections of the Business and Professions Code, is that not correct?

MR. BURCH: That is correct.

SENATOR FISHER: So there were two avenues open that would have gone to the meat of the matter, that is, the unprofessional conduct in the individual case without having raised this entirely separate and, to my way of thinking, irrelevant question as to the independent agency, or agency or independent adoption issue?

MR. BURCH: That is correct. Either of those procedures could be, or both, as far as that is concerned. And, as a matter of fact, as you gentlemen know, if the procedure in court succeeds, the action of the Bar in the case of felonies involving moral turpitude is rather automatic.

Now, in any event, the State Bar is more concerned about the ethics of its profession than the ordinary outside person is interested. We certainly are concerned about this field. We are not about to sanction anything which is presented to the State Bar as being improper conduct if, after review by our administrative agencies, it is deemed to be such.

SENATOR FISHER: Dr. McNeil indicated that there were wide, or some variance in professional fees charged by doctors, and he said that in each case you have to look at the problems involved before you know whether it was a legitimate fee.

I notice in your report that you have indicated there has been some variance in the fees, three of them as high as \$1,000.

Did you go into these far enough to feel satisfied at least in your individual mind that they reasonably

related to the total amount of services that were performed in these cases?

MR. BURCH: Senator Fisher, that compilation was presented to us by Judge Koenig. We have, in our evidentiary file, his compilation, only the facts that he gave us to do we have. There is nothing in his compilation that would indicate the amount of service that was rendered in those particular cases, so we cannot evaluate the propriety of the fee to that particular case either way.

SENATOR FISHER: You are sufficiently conversant with this field to recognize that there is a great variance in the amount of time and service involved in the individual case which might justify a difference in fees?

MR. BURCH: Very definitely. And what annoys the Bar is that we see the publicity about so many \$7,000 sales of babies, well, here we have the judge charged with the carrying out of the adoptions in the County where the most difficulty seems to lie, picking out what I assume are the worst cases that came before him, and the highest figure we have in the entire compilation is \$2270, in which the fee is a thousand -- I think it ran a little over \$1,000.

Now, there is nothing that disturbs our committee about a \$1,000 fee in a given adoption case.

SENATOR FISHER: If it is a complicated one, then that --

MR. BURCH: Very definitely.

SENATOR FISHER: -- could be well justified?

MR. BURCH: Very definitely. On the other hand, this fee would be entirely out of line, perhaps, in some other case.

SENATOR FISHER: So without knowing the factual basis, no argument could be made just because of the size of the fee?



MR. BURCH: That's right.

SENATOR FISHER: Thank you.

CHAIRMAN RATTIGAN: Any further questions?

SENATOR O'SULLIVAN: I have a couple of questions.

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: Mr. Burch, the relationship, the attorney-client relationship usually arises between what parties in this transaction?

MR. BURCH: Between the adopting parents and the attorney. That is the usual relationship.

SENATOR O'SULLIVAN: The usual relationship is between the adopting parents and the attorney? And does it usually arise before or after the knowledge by any of the parties of the existence of a particular unborn child, if you know?

MR. BURCH: All I know is what has been presented to our committee. The usual situation is as you outlined it earlier in your question to Dr. McNeil. The doctor is the one who usually first appears in the picture. He is brought into the picture by the natural mother, and the doctor and the natural mother immediately realize that they have a problem that requires the services of an attorney.

This doctor has many ways of getting a hold of the attorney. Sometimes he doesn't know, so he calls another doctor who knows the attorney.

I need not repeat this. It is the usual method of the attorney being brought into the picture. Then the attorney gets into the picture.

SENATOR FISHER: Whether it is for an adoption, or corporate matters, or tax matters, or anything else?

MR. BURCH: Or for anything. That's right.

SENATOR O'SULLIVAN: Well, normally the party making the first move is the expectant mother by going to the

MR. BURCH: That's right.

SENATOR FISHER: Thank you.

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SENATOR O'SULLIVAN: Well, normally the party making the first move is the expectant mother by going to the

doctor, isn't that it?

MR. BURCH: That is correct.

SENATOR O'SULLIVAN: The normal adoption?

MR. BURCH: The normal adoption.

SENATOR O'SULLIVAN: She is the one with the first problem, the basic problem. And normally doesn't she go to the doctor?

MR. BURCH: That's right.

SENATOR O'SULLIVAN: And at that juncture, perhaps, the doctor gets in touch with someone?

MR. BURCH: That's right. He contacts either another doctor to find out whether that doctor knows an attorney, or he, himself, may know one.

SENATOR O'SULLIVAN: Now, does it happen that way, or normally does it happen that the doctor contacts a prospective parent, adoptive parent?

MR. BURCH: The contacting of the adoptive parent may come before the attorney gets into the picture, or may come after the attorney gets into the picture. There is no pattern, I would say, on this. A lot of people would lead us to believe there is a pattern, but there isn't.

There are various ways that it works out.

SENATOR O'SULLIVAN: From a standpoint of the legal significance and the ethical significance of the transaction, isn't it important to know in a particular transaction who the original moving force is?

MR. BURCH: Very definitely. This is a problem of ethics. It is a matter of procuring, or it is a matter of soliciting business.

SENATOR O'SULLIVAN: Yes.

MR. BURCH: If the attorney is solicited to come in and help solve a situation, this is perfectly proper. If



he is the one who initiates this thing, then it is improper.

SENATOR O'SULLIVAN: Isn't that the basic --

MR. BURCH: That is the basic concept.

SENATOR O'SULLIVAN: -- ethical problem with an attorney, and we are speaking only of an attorney?

MR. BURCH: Yes. Yes, Senator O'Sullivan.

SENATOR O'SULLIVAN: So, if you get 100 fact situations of adoption involving a particular attorney, and you find that in 70% of them that the moving party, the party who initiated the first action in the transaction was the attorney, then you have the situation that is somewhat suspect, don't you?

MR. BURCH: Very definitely.

SENATOR O'SULLIVAN: But if you find in 70% of the cases, say, it started from the other direction --

MR. BURCH: Then it is perfectly proper.

SENATOR O'SULLIVAN: All right. Now, isn't it proper, too, that we could keep some tabulation, or take a series of cases in a particular instance in the investigation and find out where the moving force was and ascertain whether a particular attorney was perhaps shading the line? Isn't it somewhat similar to ambulance chasing?

MR. BURCH: Yes, it is very definitely similar. And that is the reason I said earlier it is very difficult, because you can conceive of where a mother, natural mother, comes to a doctor and a perfectly normal process is followed. The attorney is drawn into the picture and he draws it out.

Now, in this particular process of adoption he becomes acquainted with two or three families who would like to adopt a child. The mother selects the one she believes is proper and places the child. All right, the doctor now knows that this attorney, having worked out this one problem, is familiar therewith and perhaps knows people whom he has

contacted in connection with the first proceeding. So when the second unwed mother comes along, he gravitates back to the same lawyer who, by reason of his having worked on the first case, is now familiar with matters that fit into the second.

All right. Now, if this proceeds one, two, three, four times, where are you going to rule that this attorney violated ethical standards? It is difficult.

SENATOR O'SULLIVAN: All right.

MR. BURCH: It is difficult to do it.

SENATOR O'SULLIVAN: One other question, or maybe several. The mere act of an attorney finding either a child or finding an adoptive parent of itself isn't probative of the fact that he is soliciting or that he is violating any ethical standard, is it?

MR. BURCH: So long as he is doing it in connection with a matter under which he has been employed so to act.

SENATOR O'SULLIVAN: If he was employed in representing the mother, the expectant mother, he has every right to procure a home for the child, doesn't he?

MR. BURCH: I would very definitely say he has that right.

SENATOR O'SULLIVAN: He can act as her attorney and he can go out and look for a home for the child?

MR. BURCH: I would very definitely say so.

SENATOR O'SULLIVAN: Providing that she makes the placement, isn't that right?

MR. BURCH: Very definitely.

SENATOR O'SULLIVAN: And that under any statute existing in this State, he is representing her, and even though the adoptive parent, the adoptive parents, may pay his fee, isn't that right?

MR. BURCH: That is correct.

SENATOR O'SULLIVAN: And it is all perfectly ethical and proper?

MR. BURCH: Well, you are getting into conflict of interest problems now, and that is where our State Bar is having a little trouble with the American Bar Association.

SENATOR O'SULLIVAN: I was going to come to that next. Now, after he has procured an adoptive parent, then the next question comes up: Who is the attorney who puts his name on the petition for the adoption? Isn't that right?

MR. BURCH: That is right.

SENATOR O'SULLIVAN: Now, at this point if he puts his name on the petition for adoption, then there comes the question of conflict of interest, isn't that right?

MR. BURCH: That is right.

SENATOR O'SULLIVAN: And at that point he is required to make a full disclosure to all parties, isn't he?

MR. BURCH: Yes, sir.

SENATOR O'SULLIVAN: And if he fails, then he has violated an ethical canon, probably?

MR. BURCH: That is true.

SENATOR O'SULLIVAN: So that the mere acts of finding and procuring and referring of themselves we cannot call unethical unless we know these other situations, and the relationship of the parties?

MR. BURCH: That is true, assuming our definition of "placement" is the same. And, of course, we have as many definitions of that as we have people seeking to define it.

SENATOR O'SULLIVAN: I begin to wonder if the solution is in defining "placement". We have had --

MR. BURCH: I think so.

SENATOR O'SULLIVAN: I am wondering in my own



mind whether it is the answer. I don't know.

MR. BURCH: Well, this is the historic problem because, as you know, in 1955 this was suggested to the Legislature for clarification and the Legislature at that time felt that it was clear enough and didn't require any further change. And that is the reason they did not act, as I understand it, at that time.

But since then there have been these reoccurring problems which have caused us now to wonder whether we should not re-evaluate this and to spell out more particularly what is placement and what is not placement, and what a doctor and what a lawyer may do.

I think this is what we get right back to. And, of course, in this connection there will be this conflict of interest problem, which is covered more in detail in the main report which I have on file. I didn't read that to you, but that is the large, or the lengthy report that will be published in the State Bar Journal in about two weeks.

SENATOR FISHER: I wonder if I might ask a question clarifying you attorneys talking to each other there?

CHAIRMAN RATTIGAN: Certainly, Senator Fisher.

SENATOR FISHER: Maybe the point is not entirely clear to everybody present.

There are situations in which an attorney may represent both sides legally and ethically, is that not correct?

MR. BURCH: This is a hard one for me to take because I disagree with the committee on this particular. But the committee has determined that --

SENATOR FISHER: Well, let me pose my question as to the right of an attorney normally in situations where there may be a conflict of interest.

MR. BURCH: He is permitted to represent both

sides if he makes a disclosure of his interest in both sides, and the circumstances, and so long as both sides are perfectly content for him to do so. There is nothing --

SENATOR FISHER: Yes, but the parties have control over that if they permit him to do it?

MR. BURCH: That is true.

SENATOR FISHER: Assuming that in the first instance he has at least represented one of them, he has come into the relationship because one of them has employed him to do so.

MR. BURCH: That is true. That is true under our rules as well as the Canon No. 6.

SENATOR FISHER: He may thereafter, normally, under the law, he may then proceed to represent both sides if they concur in that and there is a full disclosure of the fact that he is representing both of them in the negotiations, or whatever it may be; he may do so.

MR. BURCH: That is correct.

CHAIRMAN RATTIGAN: Any further questions?  
Mr. Burch, thank you very much for your testimony.

MR. BURCH: Thank you. If there is anything further the Bar can do, of course, it stands ready, willing, and, I hope, able.

CHAIRMAN RATTIGAN: All right.

Mr. Leavitt.

MR. DAVID KEENE LEAVITT: Thank you, gentlemen.  
If it please the Committee, I have abbreviated my prepared statement somewhat because I would like to have a little extra time in rebuttal to field some of the fly balls that were sent out yesterday by the Department of Social Welfare.

In my statement I refer to the parties to the adoption as parents and adoptors. When I talk about parents, I mean the natural parents or parent of the child, and the

adopting parents are always referred to as adoptors.

As the Committee undoubtedly knows, this is the third time in fifteen years that the Welfare Department and the Social Welfare executives have sought to limit or eliminate entirely the direct placement of children in California. In 1945, again in 1954, and now in 1961 these executives have widely publicized their charges in the press and before the Legislature that independent adoption procedures are harmful to children, and riddled with abuse and dishonesty.

Their precise attitude varies from that of the Child Welfare League of America whose president only six weeks ago told an assembly committee that independent adoptions should be outlawed entirely, to a somewhat more moderate position taken by our State's Department of Social Welfare itself, and the Los Angeles County Bureau of Adoptions. Both the Department and the Bureau, when you get right down to it, urge that independent adoptions be retained, but that they be confined to placements within the parents' own circle of friends or family. These placements close to home like this constitute about 15 percent of the total independent adoptions.

What this Committee is really concerned with, then, is the remaining 85 percent where parents place their children directly with strangers.

Physicians and attorneys, on the other hand, charge an organized campaign lavishly financed with public funds to secure a virtual adoption agency monopoly.

While they concede that certain individuals have abused the adoption process, they feel that these abuses are no more widespread than other fields of professional endeavor. They accuse the adoption agencies of claiming a professional competence which they have not in fact demonstrated and which has been seriously challenged by existing scientific



studies which report equal or better placement results in the private procedure.

I would like now to discuss the specific questions asked by the Committee.

As to an evaluation of the independent adoption itself, my feeling is that the law governing independent adoptions in California is basically sound and beneficial to children, parents, adoptors and the State. Under California law placement can be made only by two classes of persons: The parent or a licensed agency.

Underlying this rule is the belief that placement must be safeguarded in the first instance from irresponsible action, either by the natural interest of a parent in her child, or the placement is going to be made by a stranger, by an agency licensed by the State. I believe this is a good rule.

After placement there is a 180-day administrative investigation. It should be particularly noted that the character and the extent of this investigation are entirely determined by the State Department of Social Welfare itself in its own regulations. It is not limited in any way by the Civil Code and need be no less complete than an agency investigation if the Department were so inclined, which it is not.

At any time during the investigation the parties, all parties, have access to the court which can promptly make any orders necessary for the child's welfare.

Now, what are the advantages of these independent adoptions? Most important, of course, is the child himself. It is to promote and safeguard his welfare that all adoption statutes exist.

What are the advantages to the child? First of all, that there is a better chance of his being placed in a good, stable, well-adjusted home, than if he were placed through

an adoption agency. There are procedures to safeguard his welfare all the way through. Now, with reference to the superiority of independent placements, I would cite the 1959 study by Dr. Rosenstein. Dr. Rosenstein is a clinical psychologist and he personally interviewed and administered generally accepted psychological tests to well over 100 families comparing agency adoptors, independent adoptors, and natural parents.

Among his findings were that independent adoptors tend to have less psychopathology, better marital adjustment, and to more closely conform to normal parent-child relationships.

Dr. Rosenstein's findings are generally consistent with the findings of Dr. H. David Kirk of The Adoption Research Project of McGill University.

Another study underway at UCLA Medical School is being conducted by Dr. Schechter on work of Dr. Simmons. Now, there is an error in my prepared text here. This study resulted from Dr. Simmons' observations at Camarillo State Hospital where he was in charge of the psychotic adolescents ward. He noticed an unusually large proportion of adopted children and decided to study them.

In looking into the adoptions, he discovered that the largest group of these psychotic adolescents had been placed by public agencies. The second largest had been placed for adoption by private agencies and the smallest group had been placed for adoption independently.

Now, this is very striking when you figure that independent adoptions out-number agency adoptions in California two or three to one, during the years that these children were probably placed for adoption.

Now, these observations of Dr. Simmons are preliminary. He simply reported his opening observations.

The study is still in progress.

I don't wish to give the Committee the idea that these observations are authoritative or final, but they have been made.

We all know that only recently have agencies recognized some of the techniques which were pioneered in independent adoptions, techniques which the agencies fought for years until they found out their own techniques. Such things as early placement in the hospital, giving the doctors information about the background of their child, and recognizing the value of this information to the child and the adoptors in later life.

Now, of course, the greatest advantage of independent adoptions to the adoptors themselves is their ability to personally choose their child. They have a right to know and weigh all the facts concerning their child's background. Even today adoption agencies carefully conceal what they want to conceal and share only what they want to share.

Recently a Los Angeles agency, for example, showed an auxiliary group one of its policy committee discussions wherein it was decided not to tell the adoptors that the mother of their child had been mentally ill. Well, as the committee thought, this mental illness was not inheritable. But still, I think most people adopting that child would rather know the facts and make up their own minds.

For other reasons, people prefer the independent procedures, among other reasons the private atmosphere in which they are conducted, the feeling of the adoptors that the practitioner is on their side and he would like to help them if he can meet the standards required by law.

Many adoptors have been frustrated by arbitrary agency rules not connected with their personal fitness. It is,



for example, virtually impossible for a husband and wife of different religions to adopt through any agency. Other agencies refuse to place any but the "special needs" children without medical proof of sterility. Adoptors sometimes fall outside agency age limits which, while publicly justified on child welfare principles, actually fluctuate with the agency's own supply and demand. Certainly some age limits are necessary, but those often adopted by agencies can exclude some of the finest potential adoptors.

Another great advantage to the adoptors is that there are more children available privately. Parents also prefer this procedure. And why this should be leads me to a discussion of the third part of the question.

Why should a woman wishing to place her child for adoption avoid the adoption agency? Virtually all parents are aware of agency facilities and where to find them.

The most important single reason for preference is the parents' desire to personally determine who will adopt her child. Only privately can she do this. She can know that it is going to have the home that she wants it to have.

As Dr. Kirk's studies have shown, parents who place their children privately tend to be better educated, more self-reliant people than those who consult agencies. Such a parent is not often willing to turn her child over to a stranger even if he has a license. She is not going to turn him over to a stranger to make the decisions that she reserves for herself. She wants the physician and the attorney of her choice. She doesn't want to have to see multiple case workers who she can't select and whose competence she doesn't know. She wants to be sure above all that she is dealt with as a human being and not a social problem.

Agencies repeatedly allege that they are not

really impersonal. That most parents consult doctors or lawyers because they don't know about agencies, and that those who do know about agencies place their children privately only when there is money involved.

Such rationalization simply avoids recognizing that most parents feel responsible for their children even if they can't keep them. Such parents prefer to do certain things themselves.

As for money, just about any expectant mother in Los Angeles can go to any one of six adoption agencies as early as her third month of pregnancy and there and forthwith receive public or agency assistance from \$75 to \$130 a month for her support. There are even programs to provide private medical care through the agencies, although the agencies don't usually mention this to the women who consult them, and sometimes when they mention them the women find they have had their babies before the paper work of getting the private medical care can be completed.

Few independent adoptions provide this kind of generous material support to a destitute parent. Seldom does she receive more than private medical care and bare subsistence for a few months.

If money was what made the difference, independent adoptions would lose hands down.

The State benefits from the independent adoptions primarily by the higher quality of its service. As in many other fields, the resources and skill of the private practitioner are far superior to those provided by public or charitable institutions.

A secondary but nevertheless great advantage to the State is a saving of public money. The cost of private adoption is borne almost entirely by the adoptors themselves.

Most people don't realize that agency placements cost far more than independent adoptions, except that the cost of the latter is borne by the adoptors. The average public or private charitable agency in Los Angeles charges the adoptors a fee of from four to \$600. This generally covers less than a third of the actual placement cost. The deficit is made up by the taxpayer, the Community Chest, or other contributors.

One Los Angeles agency recently published its figures of \$1500 as the cost of its placement and its fee of \$550 to the adoptors.

The Community Chest said this agency makes up the difference.

There is only one agency in Los Angeles that tries to avoid an operating deficit by charging the adoptors the cost of its services, and this agency's fee is \$1125 a placement.

None of the fees, however, include the cost of an attorney to represent the adoptors at court. They don't reflect the indirect subsidies that every agency gets from the State by the use of free public hospitals and public assistance payments to those parents who qualify.

By the time you add up the agency costs, the actual cost probably runs from \$1500 to \$2000 a placement, and relatively few private adoptions cost that much for medical care, hospitalization, support of the parent and attorney's fees combined.

Now, independent adoptions, I believe, answering the Committee's second question, should be retained because the only alternative to well-regulated independent adoptions is an agency monopoly. We must all understand that arbitrary power is essential to an agency operation. The agency must at all times have complete control of its placements, its processes



are secret even from the parties themselves. The agency must insist upon an iron curtain of anonymity between adoptors and parents, as much to maintain this absolute control as for any other reason. The agency's absolute power to withhold placement is one from which there is no appeal and from which the applicant is not even entitled to an explanation.

Now, I am not going to argue with the necessity of this kind of power in a successful agency operation. But it is one thing for a citizen to voluntarily submit to such power and another to offer him no alternative.

One argument is that parents are not competent to make decisions for themselves. Such an argument rejects our country's basic belief that the citizen is presumed competent to act until the contrary is shown, and if parents really were incompetent, one would expect the surveys made earlier to reveal a marked inferiority of private placements. But this the surveys do not do.

Now, another argument often heard is that unscrupulous doctors and lawyers coerce and defraud parents into private placements. Yet one of the functions assumed by the Welfare Department in its investigation is to determine that the parties have acted voluntarily and with the knowledge of the relevant facts.

Adoption workers carefully interview parents for this purpose. In 1955 the Assembly Judiciary Committee urged the Department to report all such misconduct to the State Bar. It is indicative of either a remarkably good record in the professions or inexcusable laxity in the Welfare Department that not once in the past five years has the Department or any of its licensees launched a single complaint with either professional organization. At least this is what Lucille Kennedy told the Assembly last June.

Now, I know that the Welfare Department in Exhibit B to its prepared statement has a list of complaints that it made to the State Bar. But I call the Committee's attention to Page 3 of the Welfare Department's text that this list includes the names of doctors and lawyers furnished to the association who continued to handle adoptions after being individually advised of the law by the Welfare Department or some agency.

The law, as interpreted by the Welfare Department or the agency, was rejected by Judge Walker here in the Superior Court and has been rejected by the courts of Massachusetts and Wisconsin in other cases where the Welfare Department's interpretation of similar statutes was considered.

Now, this reluctance to bring formal specific charges, based on evidence, is in marked contrast with the Department's readiness to hire Mr. Levy, who was a private press agent, at public expense, to put broad and sweeping accusations of misconduct into the newspapers. We might ask ourselves what would happen if the agencies got this monopoly that they seek. What has happened in the states where such a monopoly has been granted? Like prohibition, this kind of a monopoly has created evils far worse than those it was supposed to eliminate.

New York is typical of such states. There it is a possible felony for an attorney or physician to accept compensation in connection with the placement of a child for adoption. Under this law ethical New York attorneys avoid independent procedures. Genuine and vicious black markets have appeared. According to one recent television documentary, helpless parents are confined to "baby farms" and kept in line with threats of blackmail or bodily harm. Babies are sold to the highest bidder without regard to their welfare or the adoptors' fitness. There is no evidence of this kind of operation in California.

Another problem is what the British Parliament has called the de facto adoption. Here there are simply no legal proceedings. The child is placed and no adoption is filed. The child may be in a good home, he may not. Even if he is in the best home, problems arise, especially when the birth certificate is required for his entrance to school. The doctors may die and the child discovers he has no right of heirship. People lie for years to conceal what should have been easily and lawfully accomplished in the first place.

Now, the de facto adoption is not necessarily a great problem in New York because fortunately New Yorkers have in nearby states more reasonable adoption procedures, and thousands of them now go to Florida, North Carolina and elsewhere to place and adopt children just as other thousands go to Reno for divorces. A few of these have come as far as California.

Instead of creating the boom in agency placements that the agencies have anticipated, New York simply succeeded in driving the adoption of most of its children underground or out of the state.

Now, the private practitioner has an important place in assisting a parent in the placement of her child. A great effort has been made before this Committee by the Welfare executives to endow the word "intermediary" with a disreputable connotation. In fact, the Legislation proposed to outlaw any independent adoption where any intermediary is required. Yet, intermediaries play a vital role.

Let us look at the situation realistically. Most women who place their children have parents, friends, and families who might want to adopt the child. She needs no intermediary to find these people. She knows them. They may be very well fit and proper adoptors.



Why doesn't she place her child with them, then? For only one reason: She seeks out the attorney, the attorney's or physician's assistance to find strangers because if she placed her child close to home with her own family or friends it would be a lifelong source of pain, guilt feelings and heartbreaking temptation. She wants to find a good home for her child, know enough about the adoptors to judge, and then never contact them again.

Now, it is absurd for welfare officials to proclaim that there is a place for the independent adoption and then restrict that place to one which is unbearable to most parents.

Now, if a parent does wish to place her child -- does not wish to place her child close to home, how is she to locate potential adoptors? Is she supposed to go from door to door and ask people if they would like to adopt her baby? Advertise in the newspapers? That is a misdemeanor.

There is only one way she is going to find the adoptor she seeks, and that is by consulting her physician or her attorney and asking his help. His professional contacts make him likely to know the adoptor she seeks.

Now, she will leave the state before she is going to turn her baby over to some stranger to dispose of in its own discretion.

Service as an intermediary is the foundation of the legal profession. The profession is basically that of an intermediary between the citizen and state, husbands and wives who can't live together, parties to a business deal, and between an accused and his accusers and between adopting parent and adoptors.

Now, I think that the duties of doctors and lawyers in acting as an intermediary has been discussed. His

duty to see that there are full disclosures and full consultations, that his client at all times knows what she wants to do, what she is doing, what the alternatives are, within the limits of professional ethics and it is presently proper for the lawyer or the doctor to assist the parent in locating potential adoptors.

He doesn't have to advertise in the newspaper, doesn't have to go out knocking on doors soliciting clients. Once he has a reputation in the field, referrals follow. It is perfectly permissible and proper for the practitioner to call and consult fellow practitioners in an effort to help his client find potential adoptors.

Now, as mentioned before, the present law prohibits the attorney or the physician from making the ultimate adoption decision himself. As a professional person, the practitioner's rules of professional conduct and disciplinary procedures by which these rules are enforced can effectively discourage unethical conduct.

Therefore, answering the Committee's question number four, I do not believe that attorneys and physicians need be exempted from licensing requirements. The present law permits physicians and attorneys to render as much assistance to a natural parent as is necessary to the effective and beneficial function of the private adoption process. If a parent is unwilling or unable to personally direct the placement, chances are she needs the authoritarian guidance and freedom from personal responsibility supplied by an agency.

Now, there has been a lot of talk about Section 1620, and answering the Committee's question number five, I believe the penalty for violation of Welfare and Institutions Code Section 1620(b) should not be increased. This section of the Welfare Code is so vast in its scope and general in its

application as to be probably unconstitutional. Now, the Welfare Department made a point of the fact that the District Court of Appeal and the Supreme Court rejected extraordinary writs in the recent adoption prosecution. It should be pointed out that the review of these courts was asked on extraordinary writs and the mere fact that the court rejected an application for the writ does not mean that it passed on the constitutionality or unconstitutionality of any statutes. It simply elected to hear the matter on appeal if it should come up on appeal.

Now, under the statute as it now stands it is a crime for anyone, parents included, to place any child for temporary or permanent care or adoption without a license from the State Department of Social Welfare. The legislative history of the phrase "engages in the finding of homes for children" leaves a grave doubt that it applies to private adoptive placements at all.

Insofar as Section 1620(b) purports to govern independent adoption placement, it has probably been superseded by 224(q), which was enacted 21 years later. The Civil Code section specifically authorizes parents to place their children for adoption.

Now, certainly violations of 1620(b) as it now stands should not be made a felony. Let's consider some of the acts which might, if a prosecutor wanted to, be a felony under the statute.

- (a) The placement of a child by its parents in a summer camp.
- (b) An unlicensed physician placing a child in a hospital.
- (c) An unlicensed attorney delivering a client's child to a licensed adoption agency.



SENATOR FISHER: You are using the term "unlicensed" there meaning unlicensed --

MR. LEAVITT: Unlicensed by the Welfare Department.

SENATOR FISHER: All right.

MR. LEAVITT: What the State really seeks by increasing the penalty here is further discouragement of physicians and attorneys in adoption matters. But whatever the penalty, 1620(b) is not going to accomplish this.

The right granted a parent by Section 224(q) of the Civil Code to place her child for adoption includes her correlative right to find a proper home for the child and to engage such professional assistance in doing so as she requires.

Now, there has been a lot of talk about the disclosure of adoption fees and costs to the court, and answering your question number six, I am not going to read my statement here because I believe that just about everyone agrees these costs and fees should be disclosed. Whether disclosure is sufficient, or whether court approval or court setting is necessary, it is my feeling that especially in view of the Welfare Department's own investigation, very few of these cases ever had the fees disclosed to the court --

SENATOR FISHER: You agree that the court has plenary power to require the disclosure if it sees fit?

MR. LEAVITT: Oh, absolutely. And Judge Koenig and the Los Angeles judges have been doing this, and the County Bureau has.

My feeling, however, summarized, is that certainly we should try disclosure before the more radical and extreme alternatives of court fixing or court approval are tried. I have a feeling that you will find with disclosure that the fee abuses, if any there be, will be substantially reduced.

Now, as far as the definition of placement is

concerned, it is always nice to say a term should be defined. In answering question seven, it is a very hard one. I am not sure that a legislative definition of "placement" is necessary nor am I sure that the legislative processes are ones which can produce so closely reasoned an analytical definition by way of statute as a court can do in litigation before it.

The other problem that I see is this: There have been two definitions of the term "placement". One is that it is the act of putting a child in the hands of the adoptors that you have designated. The second is that it is a process of selecting a home, finding the people, evaluating them, and then transferring custody.

Whatever it is, the problem is not what it is but who is doing it. Now, in any event, whatever placement is, the question will always be can the attorney or the physician assist the parent in making placement or can he not assist the parent in making the placement?

Now, the Welfare Department's attitude in the Benson-Lax case was simply that the parent had to do everything involved in determining who the adoptors would be and evaluating them and finding them and the whole thing without any help from anybody whatever. And the District Attorney argued on behalf of the Welfare Department that even the hospitals who have discharged these children to adoptors under an infant dismissal report could have been indicted for placing a child under 224(q) had the Grand Jury wished to do so.

Needless to say, the court rejected this absurdity. But still, this is the way the Welfare Department thinks, and the important thing is to clarify what in the world a professional man can do in assisting with a placement.

SENATOR FISHER: But you say that the question of what a placement is ought to be left up to the court in the

individual instance?

MR. LEAVITT: I believe so.

SENATOR FISHER: Without any guidance from us on what are they to make that decision?

MR. LEAVITT: Well, Senator Fisher, there are some cases in Wisconsin and Massachusetts where specific cases have been put to the Supreme Courts of these states and the Supreme Court has ruled on who made a particular placement. The court didn't actually come out and define the term.

SENATOR FISHER: I am not asking who. I am asking about the definition of the term "placement". You said the term "placement" ought not to be defined by us but left up to the court to define.

MR. LEAVITT: I don't say necessarily it ought not, but I don't believe that the definition is as critical. The definition of the term "placement" I don't believe is as critical as the definition of what the attorney and physician can do in assisting a parent in connection with the placement of an individual.

SENATOR FISHER: I am sorry to interrupt you, but you used it as a term of art in the last two or three sentences there, as a necessary determination by the court. But then you told us about three or four minutes before that that we shouldn't clarify what the term means to begin with.

MR. LEAVITT: No, this is not what I said.

SENATOR FISHER: You leave the court between two stools, don't you?

MR. LEAVITT: I believe that the word "placement" as used in Section 224(q) is easily capable of a judicial definition after submission of a case and argument before the court.

Again, my feeling, if I can make it a little



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Again, my feeling, if I can make it a little

clearer, is that however "placement" is defined within its reasonable meanings, now, there are statutes in other states which define "placement", and they define -- in defining the "placement" these statutes define the doctor, and the lawyer, and every other assistant right out of the field. This is the kind of a thing which I feel is a danger, because these other statutes where in effect they make the activities of the doctor or lawyer assisting a parent illegal, they do so simply by defining "placement" as the transfer of custody, the finding, assisting, placement, procuring, referral, all under "placement", and then "placement" is made a crime.

I believe you have to be careful and extremely meticulous of the definition of placement and define that to the definition of the word itself and not a legislative definition which makes a word of art out of it and adds facets to the definition which are not ordinarily thought of with reference to the word itself in its ordinary usage.

In this sense, I believe a court definition would be preferable.

SENATOR CHRISTENSEN: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: Mr. Leavitt, yesterday there was suggested to one of the witnesses, Mr. Wakefield, I believe, that in lieu of attempting to change by statute the present definition of "placement", that the evils of exorbitant fees, and so forth, might well be corrected by changing the statute to only insofar as those particular evils are necessary to be corrected; that is, by way of presumptions.

For instance, the exact presumption would arise, the exaction of what would be a charge beyond the reasonable value of the legitimate services rendered could be incorporated into the statute and thereby be the subject of instruction by



the court to a jury in determining what a placement, what an improper placement was.

Have you any comment with reference to that suggestion?

MR. LEAVITT: Well, Senator, I don't believe -- let me start it this way: I am in agreement with you that there has to be some remedy for exorbitant fees. I believe there must be some determination made, not by some welfare official who never paid rent or met office overhead and doesn't know what in the world was involved by way of services, but by a judge.

SENATOR CHRISTENSEN: I am speaking of the acts of a court in a criminal prosecution for improper placement.

MR. LEAVITT: Well, now, this brings me to the second part of my statement.

While I believe there must be safeguards against these, I do not believe that the fee charged is indicative of the propriety of the placement as a placement.

In other words, it is quite conceivable to me in the Benson-Lax case, evidence indicates that in a number of cases the placement was perfectly proper, the parent met the adoptor, she knew all about them, she couldn't have been happier with them, and she personally gave them the child and the attorney received a fee which might, on closer scrutiny, be exorbitant. I don't think that fee reflects on the propriety of the placement.

Some presumptions are very dangerous things. For instance, Mr. Sloss of the Children's Home Society, gave a few presumptions to the Assembly Committee, well, six weeks ago, and a few of these presumptions I think the Welfare Department would very much like to have. One of them that it would be presumptive of a felony if an attorney handled more than three adoptions a year. Another presumption was it would be

presumptive of a felony if the attorney had anyone in his office with a social service background. Another -- well, let me just see. I have a bunch of these presumptions.

SENATOR CHRISTENSEN: Well, Mr. Leavitt, I realize, the inquiry was just in line with these sole presumptions because, apparently, the exorbitant fees are at least the source of generating a lot of this concern over it. Actually, what I had in mind was more or less as a rule of evidence. I mean in the trial itself. I mean, for an improper placement.

MR. LEAVITT: Well, I don't think evidence of fees, Senator Christensen, is even evidentiary. I don't even think it is material to the question of the propriety of the placement itself.

Now, there may be -- well, actually --

SENATOR CHRISTENSEN: We know we have in the law many -- pardon me. Just a minute. Many presumptions today. And I think every practicing lawyer or any judge also is acquainted with the danger of a presumption. I mean, it is not something to be cross-examined. The defendant is confronted with it, what is he going to do about it?

Anybody that takes the witness stand is subject to cross-examination. All of those things exist.

Nevertheless, in many of these fields, particularly in criminal law, there have been presumptions created for this specific purpose as I see it, in other words, to attempt to define the crime and to have the court, aid the trier of fact, rather, in determining whether or not in fact a crime has been committed in connection with the evidence introduced, what its legal effect can be, and what the jury can consider, such as intention to defraud, and particularly on this question of intent.

MR. LEAVITT: Well, Senator, again I don't believe--

let me put it this way: There may be certain presumptions which analysis of activity in the adoption field might indicate as relevant to the question of whether a placement is proper or not. I don't think that the size of the fees is one of these matters. I don't think that the fact as proposed by Mr. Sloss, that attorney has a social worker employed as a secretary in his office and a social worker interviews his clients, and so forth, is indicative of improper placements. If anything, to me it is indicative of a man who is trying to make the very best placements or best adoptions, or help his clients make the best adoptions that are possible.

SENATOR CHRISTENSEN: I am including within the suggestion, of course, the reasonable value of them which would include the right to introduce evidence on what is a reasonable value.

MR. LEAVITT: Well, now again, Senator, you get into the area of prosecutors' discretion. Under our law the State Department of Social Welfare has direct access to the District Attorney for prosecutions. We have heard witness after witness from the Welfare Department get up here and say that compensation that is not connected with the filing of an adoption petition and an investigation by the Bureau and the appearance in court is not compensation for real professional services. As far as they are concerned, --

SENATOR CHRISTENSEN: Are they qualified to express an opinion on that? What is the matter with the court and the rules of admissibility on that evidence?

MR. LEAVITT: Well, there is nothing wrong with the court, Senator, except the attitudes of the Welfare Department as they are now constituted. Giving presumptions, the wrong kind of presumptions, anyway, would simply be an invitation to try to show that some compensation paid to the attorney, even



reasonable compensation, was for his services before the placement, investigating, advice, counseling his client, and so forth. This they say is improper, and so they have the attorney indicted

SENATOR FISHER: That is not the law, though.

MR. LEAVITT: No, this is what their attitude is.

SENATOR FISHER: But, permitting the presumption to be raised doesn't deny the attorney the right to show that he charged fees for things which an attorney might legitimately do, including investigating and advising, and so forth, above and beyond just the filing of the petition and appearing in court. That is an attorney's historic right and Senator Christensen's question as to the presumption includes the right to show these things, and the attitude of the social welfare department has nothing to do with what the court is going to decide on it.

MR. LEAVITT: Senator, let me answer it this way.

SENATOR FISHER: Because what they say isn't the law.

MR. LEAVITT: I will answer it this way, then. If it were clear in our law that an attorney or a physician has the right to counsel, advise and assist his client in an adoption placement matter, then I would have no objection to such presumptions.

SENATOR FISHER: Don't you think that is clear?

MR. LEAVITT: Well, from the headlines and the testimony of the Welfare Department, it certainly is not.

SENATOR FISHER: I am talking about the law. I am not talking about the headlines.

MR. LEAVITT: I believe it is clear, but I seem to be a minority and, of course, some very high officials in the State Government disagree in the headlines with me every day.

I believe it is perfectly clear that you can do this, but I don't want to be the man to test it and subject myself to the publicity of an indictment or misdemeanor, and disgrace, even if I am acquitted, and all that that entails, simply so they can test their theory of the law. This is the thing.

One of the defendants in the recent Benson-Lax trial, he was not convicted. The jury, as a matter of fact, was eleven to one to acquit him. I am not going to judge the quality of activities and I am not going to tell this Committee everything he did was proper. I do know it cost him over \$40,000 to defend himself. I don't believe an attorney should be put in this kind of jeopardy in order to find out at the higher levels of the court what they are doing is proper or not.

SENATOR FISHER: Then your individual opinion is, as I understand it, that the raising of such a presumption might well foster a lot of improper litigation on the part of those who want prosecutions in this situation? That is what you are saying?

MR. LEAVITT: I believe that that is an accurate summary.

SENATOR FISHER: Then that is your answer to Senator Christensen's question?

MR. LEAVITT: Yes, sir.

I would like, if the Committee -- does the Committee desire to break at this point?

CHAIRMAN RATTIGAN: Yes.

MR. LEAVITT: May I continue after lunch?

CHAIRMAN RATTIGAN: You can come back after lunch, Mr. Leavitt. You are still before the Committee.

MR. LEAVITT: Thank you, sir.

(Luncheon recess)

December 6, 1961

1:30 o'clock P.M.

\* \* \*

CHAIRMAN RATTIGAN: The Subcommittee will be in order.

I might remark before we commence this afternoon's proceedings that it will be necessary to limit the witnesses rigorously as far as time is concerned. This is our closing session and we have four witnesses scheduled, and others who want to appear, not counting Mr. Leavitt, and to permit interrogation by the Subcommittee it will be necessary to limit each person to 15 minutes.

So, if you have a written statement, will you submit it, and if we cut off your verbal presentation, we will consider your written statement as a part of the record.

Mr. Leavitt, you were on the stand. You may proceed.

MR. DAVID KEENE LEAVITT: Thank you, Senator. I will try to finish this in 15 minutes. I will finish it in 15 minutes. I may speak rather fast because I do have a lot that I want to say.

We left off talking about presumptions of guilt, and so forth, in adoption proceedings. I have discussed the disclosure of fees and the possible remedies for fee abuses which this procedure would give us.

I would like to call the attention of the Committee to the recent Benson-Lax trial and the indictments upon which it was based. I sat through most of that trial. I read the transcript of it. I read the transcript before the Grand Jury of the evidence, and the one thing which has struck me is what has struck the Committee itself, and that is that most of the



evidence of misconduct was directed toward professional misconduct, which can be punished either by prosecution or by complaint for discipline to the State Bar or the Medical Association.

I think that this trial is about as interesting for what it did not show as for what it did show. In this trial a number of natural parents appeared. Each one of them who was brought here by subpoena by the state testified that she personally made the placement. In some of these cases the parent actually met the adopters, in others the parent did not. In all cases the parent -- all cases, pardon me, but one, and that one case did not, this parent was not the client of any person under indictment; in all cases but one the parent testified that she made the complete choice of the adopters with full knowledge of the facts and had no complaints whatever about the proceedings.

Now, the other thing which the Lax-Benson trial did not show, and I think it is most significant of all, was any placement which was not for the welfare of the child involved. Now, you can talk, or the welfare can talk about high fees and organized activity as long as it wants. The fundamental question, the thing that underlies the entire reason we are here, is to protect the welfare of children, and there was not a shred of evidence in that case that any person with whom this child, any child, was placed was not a fit and suitable parent.

In all cases the applicable welfare department, whether it was New York or California, recommended approval of the adoption as being in the interest of the child, and in all cases the court granted an adoption decree.

In one case, unfortunately, the welfare department or its representatives succeeded in having the New York case postponed granting the adoption until the witness was coerced to come out here and testify against the defendant he didn't want to testify against. But even then he went back to New York where

they were true to their promise; they granted the adoption because it was in the best interests of the child.

Now, one of the most important things that disturbs me about the whole adoption situation here is that for years we, doctors and lawyers, have been faced with a campaign to guarantee our professional incompetence. Now, I think the best example of this is the presumptions that were proposed by Mr. Sloss before the Assembly. What were these presumptions? Well, there were three of them to begin with. Number one, if an attorney handles more than three adoptions a year, then he should be presumed guilty of wrong doing. Well, now, you gentlemen being lawyers are certainly familiar with the facts that before a person can be competent in any specialty he has got to handle a lot of cases. It is only by experience that you learn what you are doing. So, to make a lawyer guilty or presumptively guilty of a felony by handling more than three cases a year in effect guarantees that just when a lawyer becomes competent, he becomes a criminal if he handles any more cases.

One of the other assumptions of Mr. Sloss is that an attorney should be guilty of some crime if he accepts compensation in connection with placement services. I have already discussed the role of the attorney in placement.

Again let me ask the Committee: Is it reasonable to assume that an attorney who investigates, counsels and advises, and spends hours with his client helping her to put her child out for adoption, must be forced to render these without reasonable compensation? It is like saying an attorney is not entitled to compensation for his efforts to reconcile a divorcing couple before he goes ahead and files a divorce decree. Those are part and parcel of the profession and should be compensated reasonably.

The third assumption Mr. Sloss offered as evidence

of guilt of a crime is that an attorney should hire in his office someone with a social service background. If the social people really believe that only social workers are competent to evaluate parents, then certainly the employment of a social service person in a lawyer's office would lead to greater competence in arranging adoption placements.

As you can see very easily, these three presumptions of guilt offered by Mr. Sloss are not consistent with any desire to eliminate a black market. They are consistent with only one desire: To make sure that every attorney who knows what he is doing is out of the adoption field.

Now, Mr. Sloss did put up two presumptions which are consistent with misconduct. One of his presumptions was charging fees that don't reasonably relate to the services rendered. I agree with Mr. Sloss, an attorney who does this could be held presumptively guilty of misconduct.

The other presumption that Mr. Sloss offered was that if an attorney solicits business, unethically solicits business, that this would be presumption of his misconduct. With these assumptions, of course, no one can disagree.

SENATOR FISHER: What is that qualifying phrase?

MR. LEAVITT: Pardon?

SENATOR FISHER: You said unlawfully solicits business? Isn't soliciting business unlawful?

MR. LEAVITT: Yes, Your Honor. Yes, Senator.

SENATOR FISHER: You didn't mean to qualify it?

MR. LEAVITT: No, I didn't mean to qualify it.

Soliciting business in any way.

Now, a few other facets of this campaign to guarantee professional misconduct, recently the state, the Continuing Education of the Bar, held a family law course. In connection with this course there was published a family law



handbook. In the handbook was a chapter on adoptions. The State Department of Social Welfare and various people in the state wrote angry letters to the State Bar and put all the pressure they could on the State Bar to eliminate completely any chapter on adoptions.

Finally, when the State Bar decided it was going to include a chapter on adoptions, they submitted the manuscript to the Welfare Department or its representatives which included a very, very mild and quite dispassionate questioning discussion of the proper role of the lawyer and the doctor.

After many conferences with the author and the Continuing Education of the Bar, the Welfare Department even succeeded in having these eliminated. Thus, the new adoption chapters in the State Bar Handbook provide next to no guidance to an attorney as to what he can do in an adoption case.

If he is not going to get guidance from the State Bar Handbook, where in the world is he going to get his guidance?

SENATOR FISHER: From the statutes and the opinions of the court, maybe?

MR. LEAVITT: From the statutes? This is what we are squabbling about, Senator, and the opinions of the court, in this state, anyway, are mighty rare.

SENATOR FISHER: You are talking about something that isn't reported, aren't you, when you are talking about the Handbook?

MR. LEAVITT: I am talking primarily about this campaign to eliminate as far as possible any information disseminated to the Bar even within the Bar itself.

SENATOR FISHER: Mr. Chairman, I don't think we are interested in a campaign for or against anything. We are interested in the facts before us on this investigation, which are the state of the law and whether it ought to be

changed.

We are talking about a political problem outside the purview of the Committee.

MR. LEAVITT: Well, then, let me go on to the next subject, Senator Fisher. With reference to desirable changes in the adoption law, there are, of course, technical problems. Technical problems such as the effect on a consent of the marriage of natural parents before an adoption decree. There are a number of these technical problems, and the more you think about the adoption law the more of these problems arise.

I think the time is ripe for codification of the adoption law, one which will give uniform procedure carefully thought out, placement, role of the attorney. I think a prompt procedure for an interlocutory decree in severance of parents' rights, disclosure of fees, and so forth, are important.

I would like very much to see a careful inquiry made into the desirability of a pre-placement investigation where potential adopters can go to an agency like possibly a state agency, possibly a licensed independent agency, and, subject to court approval, have a preliminary investigation before any child is placed with them so that when they do consult their lawyer or doctor in connection with a placement, they have been passed by a state, as it were; their home has been checked, the basic information has been looked into.

SENATOR CHRISTENSEN: That is on a voluntary basis?

MR. LEAVITT: My thought on this subject, Senator, has not gone so far as to really give me an opinion as to whether it should be voluntarily or compulsory. I certainly think voluntary machinery should be set up and possibly even compulsory.

Now, one other thing which I think must be done, and that is that the investigation and control of independent

adoptions should be vested in the court. Now, today our Superior Court has auxiliary organizations. They investigate domestic relations cases, they have probation officers, counsel in the conciliation court. These are all auxiliary, non-judicial bodies run by the court whose duty and responsibility is entirely with the court. I believe this kind of an organization should investigate independent adoptions. I believe this because today in California independent adoptions are under the supervision of a state agency which has a vested interest and an implacable hostility to the independent process except in the very limited field of intra-family or close to home placements. That I will admit they are proper. Outside of that, their hostility is tremendous.

SENATOR O'SULLIVAN: Question.

CHAIRMAN RATTIGAN: Senator O'Sullivan.

MR. LEAVITT: Yes, sir.

SENATOR O'SULLIVAN: What, in your opinion, is the role of a lawyer in an adoption? Assuming that he has been contacted in the first instance by a client who wants a baby?

MR. LEAVITT: I think the role of the lawyer in such a case is, number one, to advise his client of his client's own suitability and to legally consummate an adoption. This, I think, requires investigation of the client's background to make sure that the client, if he starts it, can finish it.

SENATOR O'SULLIVAN: Then your first legal opinion is as to whether it is a proper adoptive parent?

MR. LEAVITT: Yes, sir.

SENATOR O'SULLIVAN: That involves investigation of the home?

MR. LEAVITT: Well, perhaps it should. I don't think most attorneys go out and check the house. I think it certainly involves an investigation of the parents.



I have once or twice, but not ordinarily.

SENATOR FISHER: He said do you? Do you have anybody in your office who does?

MR. LEAVITT: No, sir. Ordinarily I talk, I interview the petitioners rather completely. I try to verify by copies of public documents, and so forth, various things they have told me. I warn them quite emphatically that if they go through with an adoption, the state is going to check into many things, which usually produces --

SENATOR O'SULLIVAN: Do you ascertain whether they are married or not?

MR. LEAVITT: Pardon? Whether they are married or not?

SENATOR O'SULLIVAN: Whether they are married or not?

MR. LEAVITT: Yes, whether they --

SENATOR O'SULLIVAN: Do other lawyers handling adoptions ascertain whether the prospective adoptive parents are married? What evidence do you require of marriage of the adoptive parents?

MR. LEAVITT: Well, ordinarily, when adoptive parents consult me, I will take their word of it that they are married. But since there is usually some period between the time they consult me and the time they may adopt a child, and since I know I am going to have to have their marriage certificate for the Bureau of Adoptions anyway, I will send for it and I will satisfy myself that way.

It has been my experience I have never had any adopting parents lie to me about such things, but it may happen.

SENATOR O'SULLIVAN: Are there any inquiries as to their religion?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: Race background?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: Previous marriages?

MR. LEAVITT: Indeed.

SENATOR O'SULLIVAN: Health?

MR. LEAVITT: Yes. Generally I talk to their doctor.

SENATOR O'SULLIVAN: In addition, you talk to the doctor?

MR. LEAVITT: That's right. I always ask the adopters for the name of their family doctors or doctors who have recently given them physical examinations and I call that doctor and talk to him about their health.

SENATOR O'SULLIVAN: Assuming you are satisfied they can adopt a child, then what do you do?

MR. LEAVITT: Well, as an attorney who handles a number of adoptions, cases are referred to me constantly.

SENATOR O'SULLIVAN: Do you handle adoptions yourself?

MR. LEAVITT: I handle quite a number of them, yes.

SENATOR O'SULLIVAN: Quite a few a year?

MR. LEAVITT: Well, I would say probably 30 or 40 in the last two years. Quite a number of cases are referred to me.

SENATOR O'SULLIVAN: Independent adoptions, these are?

MR. LEAVITT: Yes, sir.

SENATOR O'SULLIVAN: Do you handle any agency adoptions?

MR. LEAVITT: I have only handled one and that was quite unusual. I don't think you would call it a straight

agency adoption.

SENATOR O'SULLIVAN: But you handle almost exclusively independent adoptions?

MR. LEAVITT: Yes, sir.

SENATOR O'SULLIVAN: All right.

MR. LEAVITT: Quite often I will be contacted by another attorney or a doctor who asks the question that Mr. Burch posed: Do you know anybody who wants to adopt a child, or, the converse, I know some people who do.

SENATOR O'SULLIVAN: I know that happens quite often, but do you ever inquire of anyone whether they know where there is a baby about to be born or born?

MR. LEAVITT: I have never inquired of anyone whether they know there is a baby. On the other hand, quite often a case will arise where one of my clients is going to have a baby that she wishes to place for adoption, and there, of course, you have got a very severe time limit imposed by nature. I will inquire of other lawyers or doctors and ask them to keep their eyes open if they think there is a suitable case there.

SENATOR O'SULLIVAN: Of the 30 last year did most of them come to you, were you approached in the first instance by the adoptive parents?

MR. LEAVITT: I would say in most of them I was.

SENATOR O'SULLIVAN: And did they already have a baby in mind?

MR. LEAVITT: In all but one or two cases they did not.

SENATOR O'SULLIVAN: All but one or two they did not?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: And in those that they did not have a baby in mind, did you make inquiry as to the whereabouts



of the baby?

MR. LEAVITT: Not particularly. What happens quite often is that other lawyers and other doctors will call me to find out if I know people who might want to adopt their client's baby. In the independent field it seems there are many more calls trying to find parents for a particular child than there are calls trying to find a child for particular parents.

Unlike the agency field, there isn't quite the shortage of children to place for adoption in the independent field. It is a real job sometimes to find parents.

SENATOR O'SULLIVAN: We are just using this as an example, understand. But, of the 30 babies, the 30 people that you handled, I take it that you placed 30, you were instrumental or helped in placing 20 babies for 20 mothers; or 30 babies for 30 mothers. Is that right?

MR. LEAVITT: Well, I was part of a process, let's put it that way. Most of the time I represented ---

SENATOR O'SULLIVAN: We are not going to say you placed the babies.

MR. LEAVITT: No, no, no. Let me make this clear: Most of the time I represented the natural -- about two-thirds of the cases, there are two attorneys, one on each side. And in most cases I was for the adopters and another attorney was for the parent.

SENATOR O'SULLIVAN: In most cases?

MR. LEAVITT: In most cases. There have been a number of cases I handled alone.

SENATOR O'SULLIVAN: Of those 30 that you handled, how did you come to get in touch with the mother of the baby?

MR. LEAVITT: Ordinarily, her doctor or her lawyer. Now and then she herself would contact me. They would call my office and explain the situation and ask me if I had any clients

who wanted to adopt this particular child. If the situation described to me sounded like one which would be of interest to one of my clients, why, we took it from there. And we proceeded with the arrangement and the adoption.

SENATOR O'SULLIVAN: Do you have particular doctors that call you, that you know, that you are social acquaintances of or friends?

MR. LEAVITT: Oh, yes. I would say that there are three or four doctors who, when an adoption case comes to their attention -- you have to realize that this is not all direct.

For instance, there are a number of doctors who like to work with adoption cases, so they have friends who refer all adoption matters to them medically and then they would refer them or all of them or some of them to me, or to another attorney, of course. Doctors have a particular attorney they consult on particular matters.

But I would say that there were probably three or four doctors in the city that habitually refer these cases to me when an unwed mother or expectant mother comes to them.

SENATOR O'SULLIVAN: And these doctors called you?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: And sometimes you would call them, probably?

MR. LEAVITT: I don't believe I have ever called a doctor to find a baby for a parent.

SENATOR O'SULLIVAN: No, but in the course of the placement by the mother, there were occasions when you would call the doctor on the telephone and discuss the transaction?

MR. LEAVITT: Oh, very definitely.

SENATOR O'SULLIVAN: In a particular case, isn't that right?

MR. LEAVITT: Very definitely.

SENATOR O'SULLIVAN: And maybe in the course of that conversation this doctor might mention that he had another expectant mother coming in, or that a doctor friend of his had an expectant mother coming in, isn't that right?

MR. LEAVITT: Well, this is precisely what does happen.

SENATOR O'SULLIVAN: This is what took place?

MR. LEAVITT: This is the way your reputation is gained, by these ever increasing circles of referrals.

SENATOR O'SULLIVAN: Yes. And as time goes on, there gets to be an ever increasing circle of acquaintances and an ever increasing number of doctors who know that you have or are doing the legal work for adoptive parents, is that what takes place? That is what has taken place?

MR. LEAVITT: Well, that is approximately -- I think that is right.

SENATOR O'SULLIVAN: And this has built up your practice as an attorney, advising adoptive parents?

MR. LEAVITT: That is correct.

SENATOR O'SULLIVAN: Now, in any of the instances, the 30 instances, did you give any advice to the expectant mother?

MR. LEAVITT: Well, now, my particular procedure, I don't know whether it is typical or not, it is what I think should be done.

My procedure is this: Whether she is represented by counsel of her own or not, sometimes a mother will come to me. She will be referred directly from a doctor. And I may also have clients who would wish to adopt a child. In such cases, I think the law regarding conflicting interests is so completely vague I have just adopted a policy of however it falls, it falls. And I will handle it alone or with another attorney, depending



on how the case comes up.

But even if she has her own attorney, it is my practice to --

SENATOR FISHER: Excuse me. May I interrupt just a moment?

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: What do you mean "vague as to the conflict of interest"?

MR. LEAVITT: Well, the Supreme Court in the Arden case indicated that the participation of the attorney as attorney for both natural and adoptive parents, as long as there was full disclosure and utter frankness between the attorney and both sides of the adoption, it was perfectly proper.

The American Bar has taken the position there must be two attorneys. The State Bar Committee has taken the position it may be proper in other cases, but in adoptions it is a special situation and you shouldn't represent the two sides.

SENATOR FISHER: The rules of professional conduct adopted by the Supreme Court are fairly clear as to what it is, regardless of what the Bar Association, the American Bar Association, which is not a part of our law, but regardless of that, the law of California is fairly clear, isn't it?

MR. LEAVITT: The law of California, I believe, has been set forth by the Supreme Court in the Arden case about conflict of interest.

Again we get into this point where, as a practitioner, I find myself in a most uncomfortable position. If I represent both sides of the adoption the social workers, the Welfare Department, accuse me of a conflict of interest, of all of this.

SENATOR FISHER: I am not asking of what other people accuse you. I am asking about what your understanding of

the California law is in this regard, not what welfare agencies would like or what the American Association would like, because that hasn't got anything to do with California law.

You are fairly clear as to what California law requires.

MR. LEAVITT: I believe so.

SENATOR FISHER: And you know what the rule of professional conduct adopted by the Supreme Court is in that regard, do you?

MR. LEAVITT: Yes. Yes, Senator.

SENATOR FISHER: All right. That is what I wanted to get clear.

Now, I think Senator O'Sullivan has got a question pending.

MR. LEAVITT: I believe the California law on this is that you can represent both sides, but they prefer if you don't. So I think in all conflict of interest situations the law seems to favor separate representation.

SENATOR FISHER: Caution is the better part of valor.

MR. LEAVITT: Yes, sir. But, in any event, when I have discussed this matter with the opposing counsel, I will ordinarily interview his client myself on behalf of the adopting parents whom I represent, and I will examine her as to the various facts which I feel are material to a decision on the part of my clients as to whether they would care to proceed with this adoption.

When this is done, again I inquire of the natural mother and of my clients whether they desire to personally meet one another, or whether they do not desire to meet. My personal feeling is you get a much better adoption if they do.

On the other hand, there are an awful lot of

people who simply do not want to meet one another, and, after all, we are representing them and their interests as much as we can within the law. And I don't think --

SENATOR O'SULLIVAN: Let me interject another question so we will kind of get ourselves back.

MR. LEAVITT: Yes, sir.

SENATOR O'SULLIVAN: In the 30 cases or so that you handled there was only one or two where you ever actually represented the mother, isn't that right?

MR. LEAVITT: Oh, I would say probably closer to four or five.

SENATOR O'SULLIVAN: Four or five in which you represented the mother. And in those instances where you felt as an attorney that you were representing the mother, the relationship was created after you had become an attorney for the adoptive parents, isn't that right?

MR. LEAVITT: Not necessarily.

SENATOR O'SULLIVAN: Not necessarily, all right. In the four or five cases, were they instances where you became the attorney for the mother prior to the time that you had anything to do with the adoptive parents?

MR. LEAVITT: Oh, yes. Quite often a girl would consult me, say, four or five months before the baby was due. The adoptive parents might not.

SENATOR O'SULLIVAN: Now, in all four or five instances, did she pay your fee?

MR. LEAVITT: No, she did not.

SENATOR O'SULLIVAN: Who paid your fee in those four or five cases?

MR. LEAVITT: The adoptive parents ordinarily paid my fee. In fact, they always paid my fee.

SENATOR O'SULLIVAN: They always paid your fee?



MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: Is this the common situation in the profession?

MR. LEAVITT: I believe so. I have never heard --

SENATOR O'SULLIVAN: Very seldom is the mother in a position financially to pay for an attorney who represents her?

MR. LEAVITT: That is correct.

SENATOR O'SULLIVAN: In the four or five cases was there any contest of conflict between adoptive mother and the natural mother?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: There was?

MR. LEAVITT: In one case.

SENATOR O'SULLIVAN: In one case. And in that case was the baby given back to her?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: And was it later placed in another home?

MR. LEAVITT: Oh, no. No. It was kept.

SENATOR O'SULLIVAN: She kept the baby?

MR. LEAVITT: The natural parents finally married and everything turned out well.

SENATOR O'SULLIVAN: It is like one of the other cases we heard about here.

Now, in the other cases where you had contact with the mother, and those are the cases where you represented the adoptive parents, did you discuss any legal propositions with the mother, the natural mother?

MR. LEAVITT: Well, legal propositions --

SENATOR O'SULLIVAN: I mean by that the change in the status of the child which would result from the consummation of the adoptive process?

MR. LEAVITT: I ordinarily did not if this mother had her own attorney. If she did not, I explained each step in the adoption proceeding, what the significance of it was, what her rights were after each step took place, what the various documents the hospital would present her with would be, what her rights were. Where she stood all the way along. And it has been my habit since, well, for the last year or so, whether I represent the natural mother or not, to write after I have interviewed her, and after she has met my clients, if they meet at all, which they do in about 80 percent of the cases, and after she has informed me on the telephone as to her decision if she is or is not going to place her baby with my couple, it is my practice to write a rather extensive letter to her describing the couple in every detail and all the statistics about them I can think of.

One copy is for her to keep, of course. The other is to confirm her selection of this couple, and this I have been doing in just about every case.

SENATOR O'SULLIVAN: Now, in your experience as an expert in the field of independent adoptions, do you know of any cases where a natural mother has been coerced into leaving her child with the adoptive parents?

MR. LEAVITT: No, sir. And I rather doubt that this happens. Now, I shouldn't say no.

Now, let me think of my answer again. I have read in the State Department of Social Welfare's report instances of attorneys demanding promisory notes, telling the people they have got to pay back all the money if they don't go through with the consent. I advise my clients if they happen to be the mothers, or if they are not I advise them as Mr. Adams puts it in his book, this is a private community chest. If they change their mind, that is their privilege under the law. There is no legal

obligation to pay any money back.

On the other hand, I certainly inform them, although I have been criticized by the Bureau for doing so, if they do change their minds, there is something of a moral obligation to make these adopters, who put their money out on good faith, to reimburse them again. This is strictly a moral obligation, and I hope their morality will lead them to honor it.

Now I have lost my train of thought. Except, this is the only coercion I know of.

SENATOR O'SULLIVAN: Well, sometimes when the mother hesitates about signing the consent, the matter of the expense that the adoptive parents, prospective adoptive parents have been put to, is explained to her, isn't it?

MR. LEAVITT: Why, certainly.

SENATOR O'SULLIVAN: And that they have spent considerable sums on her medical care?

MR. LEAVITT: Well, I think the mother is invariably aware of this.

SENATOR O'SULLIVAN: And this is called to her attention?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: As part of the discussion that surrounds the attempt to get her to settle in her own mind that she will go ahead and sign the consent?

MR. LEAVITT: Well, ordinarily, as I say, I have only had one case where a mother has changed her mind. I had several long discussions with this mother before the final decision was arrived at that she wanted her baby back.

I would say of all the subjects we discussed in the course of these discussions, the subject of money was not mentioned.



SENATOR O'SULLIVAN: Well, I am not getting into your personal, confidential relationships.

MR. LEAVITT: No, I understand.

SENATOR O'SULLIVAN: And so forth. But, in your experience, what is the general practice in Los Angeles in this field of practice? Is it a fact that in many instances the matter of money is brought up and it is suggested to the natural mother that there has been a sort of change of position by the prospective adoptive parents, and that she should, if she is going to refuse to sign the consent, that she should make arrangements to pay them?

MR. LEAVITT: Well, if you refer to a suggestion, I am certain that it is always made as a suggestion. There may be attorneys, and I am sure there are attorneys most of whom, I hope, through ignorance - I wouldn't be surprised if one or two was through design - do make a girl sign some document which leads her to believe that she is under some legal obligation, or that these expenses are of a coercive effect upon her.

I think this. I hope that a lot of these things, as I say, are just due to ignorance of this theory of mutual voluntariness which goes into an adoption rather than an agreed exchange.

But many attorneys simply don't think about these deeper problems of adoption because they have been so completely discouraged of thinking about adoptions at all by the Welfare Department. They have been told it is a crime.

SENATOR O'SULLIVAN: All right. Now, when an adoption fails in your experience in Los Angeles County among the field of independent adoptions, when an adoption fails by reason of the natural mother taking the child back, and there has been money advanced by the prospective adoptive parents to the natural mother, is the amount of money ever paid back to the prospective adoptive parents by the attorney involved in

the transaction? Does he ever reimburse them?

MR. LEAVITT: You mean out of his own pocket?

SENATOR O'SULLIVAN: Yes.

MR. LEAVITT: I understand that there have been a number of attorneys - I shouldn't say "a number". There have been one or two attorneys who have made it a practice to, what one attorney has called "escrow" babies. They advance all the moneys, the adopting parents make a deposit on account of the attorney's fees and the costs, and the attorney more or less guarantees that it will be -- it won't cost them anything if the adoption doesn't go through.

I think this is extremely improper, and I believe that that is one thing which could be a very excellent presumption of misconduct.

SENATOR FISHER: In fact, that is illegal, isn't it?

MR. LEAVITT: I believe it is illegal, and if it isn't illegal, it certainly is improper.

SENATOR O'SULLIVAN: Now, are the fees which are charged by attorneys in the Los Angeles area in adoptions in the nature of contingent fees, that is, contingent upon the success of the adoption transaction?

MR. LEAVITT: I don't know. I know that they are in the nature of flat fees, and this is a problem because I think a lot of people, Welfare Department included, has not examined the problem of attorneys' fees.

SENATOR O'SULLIVAN: They are flat fees?

MR. LEAVITT: They are generally flat fees.

SENATOR O'SULLIVAN: All right. Now, they are generally flat fees, and are they generally paid by the adoptive parents in advance, in advance of the adoption, to the attorney?

MR. LEAVITT: I don't know if they are paid in

advance always. I know they are always set in advance.

SENATOR O'SULLIVAN: They are set in advance?

MR. LEAVITT: It is almost impossible to --

SENATOR O'SULLIVAN: All right, are there sums ever paid on account?

MR. LEAVITT: I think quite often. When you look at the situation realistically, you have a given adoption case, you know the doctor's charge, you know the hospital, you can estimate a hospital bill, you know what documents may be necessary, what help the mother needs, and you make an estimate of your fee.

SENATOR O'SULLIVAN: And that is usually in the form of a statement, a written statement, or memorandum that is handed to them, is that right?

MR. LEAVITT: Well, either in writing or orally.

SENATOR O'SULLIVAN: And that is furnished to the prospective adoptive parents?

MR. LEAVITT: That is right.

SENATOR O'SULLIVAN: That is at the first or second interview?

MR. LEAVITT: Well, ordinarily, when it is impossible for adopters -- I don't know if it is impossible, but it certainly isn't fair to expect adopters to make up their decision as to a particular adoption unless they are familiar with the charges which are going to be incurred. Again you have got to -- you have to estimate these charges to the best of your ability, you must fix a flat fee because in this, if you start charging on an hourly rate, so much in court, and so forth, and the adopter has no way of knowing whether his fee is going to be \$100 or \$10,000 --

SENATOR O'SULLIVAN: So what is done is that a fee of, say, \$1500 is quoted consisting as follows, to wit, is that correct? And then an itemization?



MR. LEAVITT: Well, this is my practice. I hope that is the practice of other attorneys.

SENATOR O'SULLIVAN: What does the itemization contain?

MR. LEAVITT: The itemization contains the obstetrician's statement to me of his bill. Now, he, too, ordinarily works on a flat fee basis.

SENATOR O'SULLIVAN: And you know that in advance, is that right?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: You generally know that before the baby is born?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: That is because you have discussed it with the doctor?

MR. LEAVITT: That is true.

SENATOR O'SULLIVAN: And he has told you that his fee will be, say, \$200?

MR. LEAVITT: Well, that's right.

SENATOR O'SULLIVAN: Now, what else?

MR. LEAVITT: You know where the baby will be delivered.

SENATOR O'SULLIVAN: That is the hospital bill?

MR. LEAVITT: That's right. Now, hospital bills, of course, vary. There are some parts of town where a three day maternity stay will run \$125, \$140. Cedars, or some of these, will run three or \$400. So when you know the hospital, you can get an idea of the charges to be incurred there. This is, of course, subject to complications or other problems which may arise.

The girl may have to stay in the hospital extra time, and these are risks which you should explain and which I do explain to the adopters.

We know what the girl's financial situation is, whether she needs help with her apartment rent, whether she is able to work, whether she has any sources of support.

If she hasn't, we set up a budget for her, a schedule of what her subsistence expenses are liable to be, and this is set forth in the adopter's --

SENATOR O'SULLIVAN: This is included in the statement, and this is under the heading of expenses for the mother?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: Now, that may run 2 or \$300?

MR. LEAVITT: It can run anything from zero. I understand, I know there are cases where it runs into 7, \$800, even over \$1,000 sometimes. As I have grown more experienced in this practice, my earlier cases I got a lot more generous with my clients' money than I am today. But still, it can run to a lot of money, depending on what this girl needs.

SENATOR O'SULLIVAN: What other items other than the money for the mother's keep? Is there anything else? A layette, or anything like that?

MR. LEAVITT: Pardon?

SENATOR O'SULLIVAN: A layette, clothes for the baby, or whatever other items there are?

MR. LEAVITT: Well, I generally set up a contingency fund of from 50 to \$100 for the anesthesiologist, for certified copies of documents that I will have to get for the investigation or for the Bureau of drug bills which have a way of floating in later, X-rays and laboratory fees, and things which do crop up. And then on top of that is my attorney's fee.

SENATOR O'SULLIVAN: What is the average attorney's fee in these cases?

MR. LEAVITT: Well, I can't testify as to the

average fee. I believe that a proper fee for the services I render in connection with an ordinary independent adoption are worth \$500. I don't always charge \$500.

SENATOR O'SULLIVAN: No, no.

MR. LEAVITT: But I would say my average fee runs between, oh, 275 and 325 for handling one of these. If there are two attorneys, again you learn as you get in this profession, or in my earlier cases I was very generous with the mother's attorney, but these days I won't let my people spend their money quite that lavishly.

SENATOR O'SULLIVAN: Included in the itemization is the payment of fees for the attorney for the mother, the independent attorney for the mother, is that right?

MR. LEAVITT: That's right.

SENATOR O'SULLIVAN: And normally does that come in because you call it to the adoptive parents' attention that she should have her own attorney?

MR. LEAVITT: Yes. I tell the parents that this woman is represented by her own counsel and that his fee for the services he is rendering will be "X" dollars. And I try --

SENATOR O'SULLIVAN: Normally, does she have an attorney when you first contact her, or does she obtain one by herself, or do you send her to a list of attorneys, or how does she get her attorney?

MR. LEAVITT: No. Usually, almost without exception, the case is referred to me by her attorney. That is, her attorney will call me and say, "David, can we work together? Do you know a couple that would want to adopt this child?"

I say, "Fine. I think I do. You represent her, I will represent the couple, and we will put it through."

He does the sole custody, he verifies her marriages, he is responsible for the hospital arrangements and for making sure



that she is fully informed at all steps of the proceedings. I handle the petition, I investigate the petitioners, and on their behalf interview the girl, make sure that the placement is confirmed in writing by the girl, that she knows all the facts so that there can never be a comeback on my petitioners that a girl didn't know the facts.

SENATOR O'SULLIVAN: Do you often times refer, in those cases - well, what other items would be included, or do you recall anything else that would be in that itemization? That is, the \$500 fee, roughly, and it might be a little more or less, for the adoptive parents' lawyer, and then there is maybe 175 for the mother's attorney.

MR. LEAVITT: Well, my practice during the years has been to confine it. If my fee handling it alone would be \$500, I try to keep the combined fee for two attorneys under 750. And usually I try to keep it around 5. I have been more successful doing that lately. But the fees are all revealed, and I don't think there are other items. There used to be, again, the thing which makes me so disturbed at Mr. Sloss's presumptions, is that I recall my first few cases were with mixed emotions. I permitted things to happen that I now know, having studied the field, and having been in it, should not have happened.

At the time there is only one way to learn these things, and that is by actually practicing them. And, unfortunately, your clients have to suffer for your mistakes. But you can only learn by making some of these mistakes, and then gradually you begin to learn how some of these things should be handled.

There was a time when I felt that as an attorney guaranteeing to my client that the baby they would adopt would be a healthy baby, it would be up to me to go out and hire a pediatrician to go out and check the baby. I don't do this any

more. I tell them to make their own arrangements with their own pediatrician.

Outside of that, I can think of no other expenses, except sometimes an airplane ticket home. This sometimes happens.

SENATOR O'SULLIVAN: Airplane ticket home for who?

MR. LEAVITT: For the natural parent. Sometimes a girl will come out here from the mid-west, or east, and she came out here specifically to have the baby away from her family, and possibly to avoid some of these agency monopoly laws, a number of them come out for that reason. And she wants to be sent home.

SENATOR O'SULLIVAN: Are there ever any references out here from the east, to California?

MR. LEAVITT: I have never received any.

SENATOR O'SULLIVAN: You have never received any?

MR. LEAVITT: No.

SENATOR O'SULLIVAN: Do you know of any such practice where attorneys in the east, perhaps, in New York, would refer a girl out here to have her baby, send her out here to have her baby?

MR. LEAVITT: Well, the record again of the indictments would indicate that there have been occasions where lawyers or doctors in New York have referred expectant mothers to Dr. Lax, or to Mr. Benson specifically.

Again, I have no personal knowledge of it.

SENATOR O'SULLIVAN: Do you know Mr. Benson?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: How long has he practiced here, to your knowledge?

MR. LEAVITT: I am not sure. I believe he has practiced about 10 or 11 years. I know he is now under suspension by the State Bar for a conviction of personal injury fraud, which

arose prior to the adoption misconduct with which he was charged.

I think he is under suspension pending appeal of his felony conviction of personal injuries, and if that appeal, if the conviction is affirmed, he will, I think, automatically be disbarred.

SENATOR O'SULLIVAN: He has already been suspended by the Bar; Benson?

MR. LEAVITT: Yes.

SENATOR O'SULLIVAN: Are there a known group of lawyers in the Los Angeles area, where it has become sort of common knowledge in the profession that they are conducting themselves as not only specialists in the field, but as sort of a ring in this field of adoption?

Now, I ask you this frankly just to be absolutely open about it. We just would like to know whether there is any such thing here that you might know of as a professional man, as a lawyer in your profession.

MR. LEAVITT: Well, let me answer it this way: There is a known group of lawyers who do a lot of adoption work that might be termed adoption specialists, just as there is a known group of bankruptcy specialists, of admiralty specialists, copyright specialists, and other specialties in these more esoteric fields. Adoption is a more esoteric field.

As far as a ring is concerned, I think we should think about the term "ring".

First of all, it is more or less a weasel word; doesn't have too much of a defined meaning.

SENATOR O'SULLIVAN: Well, I think we think of it as more of an association.

MR. LEAVITT: Well, it is more than an association, Senator. A ring has certain characteristics, I think, trying to define the indefinable.



SENATOR O'SULLIVAN: Well, it has gold in it.

MR. LEAVITT: All right, it has gold in it.

SENATOR FISHER: And no wedding rings here.

MR. LEAVITT: Well, I will tell you, there is darn little gold in the adoption practice, except maybe for one or two guys. And they have a secret I never had. But, in any event, a ring implies a group, number one, with unlawful purposes.

Number two, a closed group, a secret group, a group to which you can't gain access, which is exclusive.

And it further implies more or less conscious criminal activity.

Now, in this sense there certainly is nothing even approaching a ring in Los Angeles. There are, of course, a group of lawyers who do a lot of adoption work. Mr. Benson is one of these lawyers. I am another, according to the Welfare. I am part of a ring. Well, I am not part of a ring. The thing that should be considered is the fact that there are a number of lawyers who do a lot of this work. Up until some of the revelations of this investigation I didn't have the slightest doubt about calling Mr. Benson if I had a problem on adoptions and relying on what he said, because I had heard from others that he knew his way around the adoption field.

I later find out that God forbid I should have done some of the things he did; he is alleged to have done.

SENATOR O'SULLIVAN: You didn't know he was under suspension when you called him?

MR. LEAVITT: Well, this was before his trial and his indictment on the suspension. Likewise, there were other men who were suspended; Mr. Carsola, Mr. Wank I found did a lot of adoption work.

I, of course, had cases with these men. There were a number of other men who were not indicted, not criticized,

I think, except possibly by the Welfare Department in its own secret report, whom you naturally gravitate to. You hear that an attorney out in Van Nuys does a lot of adoption work, you have a problem, you call attorney X. You can't guarantee that he is honorable, not a fee gouger, or anything else. All you know is that he does the work and he knows what he is doing.

Then you find out there are headlines and, by virtue of the fact that you called Mr. X, whose conduct you had no possibility to observe, by virtue of your handling cases with him all of a sudden you are suspect.

I know the old saying: If you lay down with dogs, you get up with fleas. But you don't get close enough to get the fleas, that's the thing.

SENATOR O'SULLIVAN: Well, I don't believe we believe in that here.

SENATOR FISHER: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: Following this thing down, everybody likes to argue by analogies. So you have a good number of attorneys in Los Angeles, and we do have in San Diego, that specialize in criminal law. And you have them consulting with each other on technical problems within their field that they would consult with you as an adoption specialist, or me as a corporations specialist, or the next man as a tax specialist. Some of them once in awhile get caught making illegal arrangements with bail bondsmen, for instance. That doesn't make all those who practice criminal law as a specialty a criminal ring, does it?

MR. LEAVITT: I don't believe it does.

SENATOR FISHER: Is that the distinction you are trying to make?

MR. LEAVITT: Well, yes. This is indeed the distinction I am trying to make, plus the idea of the exclusiveness.

I think this is the real difference between a ring and a group of specialists. There is not a lawyer in the county who would want to practice in the adoption field who could not call me or any other lawyer whose name is associated with adoptions and get all the help and blessings in the world.

SENATOR FISHER: Get some brotherly advice from you as to the particular pitfalls within that part of the law, isn't that correct?

MR. LEAVITT: Certainly.

SENATOR FISHER: That is how lawyers work in large measure in whatever field, isn't that correct?

MR. LEAVITT: Yes, sir.

SENATOR FISHER: Now, you said something about a moral obligation to bear the costs of hospitalization and so forth, by the mother. Those costs are, in any event, borne by somebody, whether it is an independent adoption or an agency adoption, isn't that correct?

MR. LEAVITT: Yes, sir.

SENATOR FISHER: Is there any exception in the adopting field to the general rule of law that one who has supplied the necessities of life, which include medical services in this sort of a situation, and so on and so forth, is there any exception in the adoptive field that the person to whom those services are supplied by other than just a pure volunteer, which is not the situation here, is there any rule of law you know that exempts them from the ordinary rule of law that they become legally obligated for those costs, conceding, of course, that in many instances many people don't pay for their necessities?

MR. LEAVITT: Well, Senator, I feel this way: I don't feel that this ordinary rule of quasi contract, or of contract, that you are responsible, that you may pay for your necessities, does apply to adoptions because we are in a very



ticklish thing here where you cannot, as a matter of policy, permit a parent to sell her child for doctor bills or for cash.

SENATOR FISHER: I understand. I understand the law of contracts on that, and I am not talking about the baby in lieu of money. I am saying that having supplied necessities for the mother, whether or not she gives up her baby, is not the rule of law that she is obligated for them in any event? Whether she can pay them or not is some other question.

MR. LEAVITT: I don't believe so, because I think implied in every adoption arrangement, if not actually expressed, which it often is, is the idea that the adopting parents are in effect making a gift predicated on the good faith intention of this girl to place her child with them for adoption and sign a consent unless she feels morally unable to do so.

I don't think it is quite the same as supplying necessities. It is again one of these policy problems.

SENATOR FISHER: Except for the question of forgiveness, is not the mother who wants to put her child out for adoption obligated to the agency that may pick up the bills?

MR. LEAVITT: I don't believe so, Senator.

SENATOR FISHER: Why not? What rule of law, what statute or what case can you point to that would indicate that rule of law does not apply here as it applies every place else?

MR. LEAVITT: I don't suggest that she might not be legally -- if she were legally liable at all to anyone, I don't suggest that she would be less liable to an agency than she might be to the parents in an independent adoption. But I know the agency policy in the welfare regulations specifically forbid it.

SENATOR FISHER: That may be the adoptive parents' policy, to kiss off the money, too.

But I am saying as a legal matter there is no such

fraud, which is another case.

SENATOR FISHER: Yes. But absent that advice, you would agree with me that they do in fact have a legal obligation for the supply, or a legal right to proceed to collect for the supplying of necessities of life?

MR. LEAVITT: I am not sure I agree, Senator. I really would have to give the matter a good deal more thought. I am really not sure I would agree there.

SENATOR FISHER: I am trying to get the difference between what the law is and what you advise your clients to do in light of the law and what you are advising us that the law ought to be by a matter of general policy. I am trying to get these distinctions out here. I am not arguing with you on the thing. I am inclined to agree with you.

MR. LEAVITT: We have Section 181 of the Penal Code which proscribes the sale of custody or the sale of individuals --

SENATOR FISHER: I haven't entered into the question of that quid pro quo. I understand that.

MR. LEAVITT: I see.

SENATOR FISHER: Are you advising that the policy of the law ought to be that one who expects to adopt in this situation, and does supply the necessities of life, ought not to be permitted to assume that they have a right and ought to get one of two things?

MR. LEAVITT: Either the baby or the money.

SENATOR FISHER: That's right.

MR. LEAVITT: I think that that should not be the policy of the law for this reason: Because if this were the policy --

SENATOR FISHER: The policy of the law does not permit the one, but it does permit the other.

MR. LEAVITT: Well, the only problem is this: I think that the adoption laws have an overriding policy, and that overriding policy is to assure the placement of children knowingly and voluntarily and with a certain protection of the mother's right to change her mind.

I feel that if, in the field of reimbursement of moneys spent, the law permitted a policy of a legal right to recover these funds of the girl who, after all, is ordinarily destitute --

SENATOR FISHER: It might be coercive of her decision, that is what you are saying.

MR. LEAVITT: It would be tremendously coercive, and would defeat the adoption law. And I think the adoption law policy is more important than the legal right of parents to recoup the money which they expended with knowledge of the risks involved.

SENATOR CHRISTENSEN: Mr. Chairman, just one question.

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: Mr. Leavitt, you mentioned the fact that you have on four or five occasions been contacted by the natural mother. I assume she is an unwed mother?

MR. LEAVITT: Not always, Senator.

SENATOR CHRISTENSEN: What?

MR. LEAVITT: About 40 percent of the time. Or, pardon me, about 60 percent of the time.

SENATOR CHRISTENSEN: And in all cases, whatever fees you collected have been paid by the adoptive parents who are also represented by another attorney?

MR. LEAVITT: Sometimes -- yes.

SENATOR CHRISTENSEN: What, if any, services have you rendered the adoptive parents to justify receiving any



money for legal services?

MR. LEAVITT: None.

SENATOR CHRISTENSEN: Do you regard that as a proper charge or a proper professional charge?

MR. LEAVITT: Yes, Your Honor.

SENATOR CHRISTENSEN: On what basis?

MR. LEAVITT: On the basis of that, again, the practical basis that the parent in an adoption situation is ordinarily in almost every case unable to retain counsel on her own hook, just as the wife in a divorce proceeding is unable to retain counsel out of her own funds quite often. I think that in order --

SENATOR CHRISTENSEN: That is an entirely different basis, Mr. Leavitt.

MR. LEAVITT: Well, I believe this: I believe that if the natural parent is entitled to legal representation, and she cannot pay for it, I believe that that is one of the necessities, as it were, to be supplied her along with her hospitalization and her doctor bills by the adopting parents.

And I believe this is quite customary, where there is separate representation for the adopting and natural parents.

SENATOR CHRISTENSEN: It may be customary. On this issue of the propriety of making a charge for services that are not rendered to the person who pays them --

MR. LEAVITT: Well, I believe that it is proper. I do, because you are rendering a necessary service to the mother just as her obstetrician is a necessary service.

SENATOR CHRISTENSEN: One further question: On this question of coercion of the natural mother, without going into obviously everything that you would tell her, you would advise her as to her legal rights in the matter?

MR. LEAVITT: Certainly.

SENATOR CHRISTENSEN: And would you also advise her of what the effect of not having an adoption would be on the legitimacy of the child in the case of an unwed mother?

MR. LEAVITT: I would explore the alternatives available, including that of keeping the child and raising it as a fatherless child.

SENATOR CHRISTENSEN: And do you regard the fact that if the child would remain illegitimate as opposed to legitimacy through an independent adoption as any form of coercion of the mother to undertake an independent adoption?

MR. LEAVITT: Well, I would say this: There is no such thing as an adoption where there is no coercion by force of circumstance. No woman who can keep a child with reasonable comfort and reasonable chance of successfully and happily raising that child and keeping her own life together is going to give up a child. There is always coercion and pressure from the elements of a life involving giving up a child for adoption, so that certainly the idea of having to keep a child that is illegitimate might be considered a coercion. But it is coercion with agencies or anybody else.

There are a million pressures on a girl's life which brings her to give up her child. The job of the lawyer, as I see it, is to discuss all of these coercions, discuss all of the ways she might overcome them, discuss what the future might bring, and arrive at the best of the number of bad choices; the choices available to an unwed mother of a baby, every single choice she has got is bad.

It is just a question of choosing the lesser of all the evils and helping her to do this intelligently.

SENATOR CHRISTENSEN: One further question: You referred to an investigation, or recommended that perhaps an investigation to aid the court, either through probation officers

or the conciliation service, whatever it may be, would be wise. Do you regard that as a substitute for the investigation by the Department of Social Welfare now required in independent investigations?

MR. LEAVITT: Yes, Senator.

SENATOR CHRISTENSEN: In other words, would your recommendation include dispensing with the requirement of a reference and a report by the State Department of Social Welfare?

MR. LEAVITT: I would suggest that -- well, I have several suggestions in that regard. I, number one, would suggest substituting for this State Department with its very sharp and well known views toward independent adoptions generally, I would suggest substituting for that Department an agency staffed with social workers on a county level or on a group of counties or regional levels, which is directly responsible to the court operating under rules set forth by the Legislature or by the court. I believe that such an organization will have only one function, and that is to investigate these adoptions properly, to do everything they can to make sure that the system functions properly, and will not have a side occupation to which it devotes hundreds of thousands of dollars of lobbying against the very thing they are supposed to be helping along in the courts.

SENATOR CHRISTENSEN: In other words, your thought is it should be under the control of the court, the investigation, rather than the Department?

MR. LEAVITT: Yes. Now, I don't mean to suggest that it should be a discretionary reference. I think this investigation should be made in every case.

SENATOR CHRISTENSEN: Just one further question, Mr. Chairman, on another point.

Were you present yesterday when Judge Koenig



testified?

MR. LEAVITT: Yes, I was, sir.

SENATOR CHRISTENSEN: And also when the charts were exhibited by the Chairman of the Social Welfare Board?

MR. LEAVITT: Yes, sir.

SENATOR CHRISTENSEN: Where the lawyers were referred to as Lawyer A, B, C, and 1 or 2. Are you one of them?

MR. LEAVITT: Yes, sir. I was particularly disturbed by the reference to two cases of mine where the adoption took place in Illinois. I brought the files of these cases with me.

It was my hope that I would be able to present these files to the Committee for the Committee's examination in executive session. I spoke to both sets of adopting parents in Illinois this morning, and both of them gave me permission to disclose all information in the file to the Committee. I haven't the vaguest notion where the natural parents are. I spoke to two attorneys for the State Bar this morning on the telephone from this building and, of course, we must realize that the State Bar does not give unofficial opinions on the telephone about anything.

On the other hand, it was called to my attention that the Business and Professions Code, I forget the Section number --

SENATOR CHRISTENSEN: 1620.

MR. LEAVITT: Not 1620. Business and Professions 6068, makes it mandatory that I not disclose any confidential information relating to a client without that client's explicit release except at my peril.

As I say, I have no releases from my clients, who were the natural parents in these two cases.

I do believe, however, that it would be possible

if this Committee had the time for me to review these files for the Committee without disclosing names or confidential information, or, if I can possibly chase down the natural parents involved here, I will do my utmost to get their release, at which time I will be very happy to submit the files for the Committee's examination.

The cases involved here were presented to the Committee as being something like a person phoning up and saying "Got a baby?"

And I said, "Yeah. Give me \$1600 and come out and get it."

And they came out, handed over some money, took a baby and flew back to Illinois.

SENATOR CHRISTENSEN: Without going into the specific details of it, which I realize as you said is either questionable or improper at the time, can you state whether or not the recitation of what happened is true?

MR. LEAVITT: The recitation of what happened is absolutely false. I can state that categorically. And it is backed up by the correspondence in these files.

And, as a matter of fact, there is a transcript of a hearing before Judge Koenig himself which refutes some of the things which he had to say on the stand yesterday.

CHAIRMAN RATTIGAN: Thank you very much, Mr. Leavitt.

MR. LEAVITT: Thank you, gentlemen.

CHAIRMAN RATTIGAN: Mr. Mayers.

MR. RICHARD L. MAYERS: Gentlemen: I want to thank you very much for providing me the opportunity to appear before you.

I would like first to make perfectly clear the status of the role in which I am appearing before you. Civil Code Section 226a provides that where the mother desires to withdraw

her consent, the Department of Social Welfare, as licensed agency, shall, prior to the hearing on this motion, file a report in recommendation to the court, and that it shall appear at the hearing to represent the interests of the child.

The office of the Attorney General appears at these hearings on behalf of, I guess, society, or parents patriae. And what I am about to tell you grows out of the experience of all the deputies in our office - we have discussed this statement I am giving you - out of our experience in these cases.

SENATOR FISHER: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: A question. You appear on behalf of whom, the child, or someone --

MR. MAYERS: On behalf of the child, as distinct from the Department of Social Welfare. That is what I want to make clear. We appear in the sense that the child is the only party at these hearings who is not represented; society's interest is not represented.

SENATOR FISHER: You appear, then, in behalf of the child?

MR. MAYERS: Correct.

SENATOR FISHER: Your appearance is in behalf of the child.

MR. MAYERS: That is correct.

SENATOR FISHER: Society pays you to go represent the child.

MR. MAYERS: That is correct.

SENATOR FISHER: All right.

MR. MAYERS: And I am going to endeavor to confine my remarks as best I can to my views of what the law presently provides. And I shall leave it to you gentlemen to deal with the future and the policy implications of any legislative changes.



I therefore shall not confine, I shall therefore not address myself to the first two questions that you have presented. However, I think, I know of no endeavor to outlaw independent adoptions. It is a co-equal method of proceeding with an adoption in this state, and I think our concern here is essentially with bettering that process, finding out where and in what areas it may be weak.

SENATOR FISHER: Question.

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: Then your view of the law is that independent adoptions are not outlawed by virtue of the present statutes?

MR. MAYERS: Not only not outlawed, it is a co-equal and legitimate and equal method of adopting. There are two methods of adopting in this state. I am not talking now of parental, relative adoptions, but there are two methods and they are both co-equal.

SENATOR FISHER: All right.

MR. MAYERS: So I will first address myself to your third question, which we have had a good deal of discussion on, the role of the attorney and doctor; what happens when he gets involved in an adoption situation.

Both the lawyer and the doctor may perform their respective functions - functions for which they have received professional training and for which they have been examined and for which they are licensed - namely, the practice of law and the practice of medicine.

Neither the training obtained in a medical school or in a law school, nor the subsequent examinations nor the licensing requirements given to doctors and lawyers are designed to or do in fact equip the doctor or lawyer to find homes for children or place them for adoption.

On the contrary, our present law specifies that no one, other than a natural parent, may engage in these functions unless specifically licensed to do so. So there is no doubt that under existing law neither an attorney or a doctor may engage in finding prospective homes for children or place children for adoption.

I should point out that existing law does not distinguish between the doctor and the lawyer on one hand or cab driver or friendly next door neighbor on the other. The present law is premised on the assumption --

SENATOR FISHER: Excuse me. What is a definition of an attorney representing a person? He stands in his stead, doesn't he? It is the very definition of an attorney.

MR. MAYERS: Yes, he may stand in his stead. But --

SENATOR FISHER: All right, that's all.

MR. MAYERS: He may stand in his stead, if I may --

SENATOR FISHER: At law?

MR. MAYERS: No. I prefer to comment, Senator, in his stead to perform legal functions. He may not stand in his stead to perform functions that are not legal or otherwise prohibited by law, such as home finding or home placing.

Present law is premised on the assumption that if a natural parent desires to have her child adopted, she will either herself chose, select, find, place her child, or that, lacking the time, knowledge, ability, willingness to do this, she will have these things done for her by an agency licensed by society to perform these specific functions. Our present law does not contemplate any legally recognized middle ground. The natural mother does not, under existing law, have a choice between adopting agencies on the one hand and doctors or lawyers on the other.

SENATOR O'SULLIVAN: Question.

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: Senator O'Sullivan.

SENATOR O'SULLIVAN: Do you have authority for that?

MR. MAYERS: I prefaced my remarks, Senator, indicating these are the views of this office that I represent, the office of the Attorney General.

I think the Committee knows that there are no cases on this other than the opinion which was issued by our office some years ago. This is really the best we can do for you.

SENATOR O'SULLIVAN: You have no authority?

MR. MAYERS: Other than that.

SENATOR O'SULLIVAN: It is merely another group of attorneys' opinions?

MR. MAYERS: Other than this, Senator. The office of the Attorney General is not ax grinding. Their opinions have been cited frequently by the courts and are given recognition by the courts.

SENATOR O'SULLIVAN: They yet haven't risen to the position of a court in this state.

MR. MAYERS: Yes.

SENATOR O'SULLIVAN: What I am trying to get at is that you have no case that holds that.

MR. MAYERS: There are no cases in California defining the word "placement" or the role of an attorney in placement, that I know of.

SENATOR O'SULLIVAN: Upon what do you attorneys in the Attorney General's office base your conclusion that a parent cannot place her child with the services of an attorney?

MR. MAYERS: The opinion, Senator, I don't --

SENATOR O'SULLIVAN: I don't care about opinions, unless it is a legal opinion.



MR. MAYERS: Well, the reason for that conclusion was in that opinion, essentially, as I recall it. The theory that the mother could not designate her attorney as her agent was based on the recognition that the job of placing a child is a personal one involving one that could not be delegated.

It involved a personal responsibility, that society said this is a decision so personal that it may not be delegated to one who was not licensed to do this job, because society has an interest in this problem.

SENATOR O'SULLIVAN: Is there a case that holds that no portion of it is delegable?

MR. MAYERS: No. I mean clear, Senator, There are no cases on this.

SENATOR O'SULLIVAN: You didn't make it clear, that is why I asked the question. Go ahead.

MR. MAYERS: No, no. I made it perfectly clear. You asked us our reasoning --

SENATOR O'SULLIVAN: No, I asked for cases. I am not nearly as interested in reasoning as I am in cases, and if you are getting me a legal opinion --

MR. MAYERS: Well, the case is only normally as good as its reasoning, Senator.

SENATOR O'SULLIVAN: I wouldn't say that. I would say that sometimes a case is a good deal stronger than the reasoning.

MR. MAYERS: We have a good deal of cases in the South on integration in which neither the holding nor the reasoning is very good, but they are cases.

SENATOR FISHER: They are not the law of the land, though, because the fundamental cases on that are superior.

MR. MAYERS: That is true.

SENATOR FISHER: In Superior Court.

MR. MAYERS: Let me give you some examples of what happens when doctors or lawyers serve as intermediaries or agents and find homes and "make the arrangements".

SENATOR FISHER: Let me ask, may I, before we proceed beyond this point, if it is your opinion that in the absence of this statute on which, or out of which your logic flows, that in the absence of that statute the attorney might as an incident to his practice of law perform these functions as an agent of his client?

MR. MAYERS: In the absence of a statute requiring --

SENATOR FISHER: Absence of this statute on which or from which you have deduced this opinion.

MR. MAYERS: Namely, the statute which says no one other than a parent or agency may place?

SENATOR FISHER: Yes. In the absence of that.

MR. MAYERS: I would think so, yes.

SENATOR FISHER: Do you think that the right of an attorney to practice law in an adoption case, perform legal services in an adoption case, included the right to do those incidental things necessary, or convenient for that practice in arranging the adoption as a legal transaction, if you want to put it that coldly?

MR. MAYERS: I will answer your question. If I may, just to be clear, so that I understand it, in the absence of any statute defining who may or may not place, then I would think the mother could give this job to anyone to do.

SENATOR FISHER: Now I am not talking about the adoption. I am talking about the adoption proceeding. Nobody but an attorney could perform that in behalf of the mother in the absence of the statute, isn't that correct?

MR. MAYERS: She may appear in pro per.

SENATOR FISHER: But nobody in lieu of her could do that?

MR. MAYERS: That is true.

SENATOR FISHER: Other than an attorney. This is a historic area of the practice of law, is it not?

MR. MAYERS: That is because attorneys are the only people licensed to practice law.

SENATOR FISHER: But that is correct, isn't it? I know the reason for it, but I just want to get the fundamental principle down.



MR. MAYERS: That is correct.

SENATOR FISHER: The practice of law includes the right to do these things incidental and necessary to the full performance of those duties, is that not correct?

MR. MAYERS: Of those duties, yes, sir.

SENATOR FISHER: And is it normal in legal interpretation to limit or exclude those who have a right, and this right is in the nature of a franchise and not a natural right, because they are officers of the court, which puts them on a different basis than most of the other professions, they are performing a governmental function in this regard, do you know of any rule of law that says that something, a general statute of this sort, excluding other than the mother, would by implication withdraw some of the normal practices or incidents of the practice of a quasi-governmental function from those who are licensed to perform that function?

MR. MAYERS: The court might well determine, Senator, that certain types - -

SENATOR FISHER: Well, do you know any authority that permits that?

MR. MAYERS: If I may, I will answer your question. It seems to me that a court might well determine that there are certain types of activities that are so peculiarly personal that they may not be given to a licensed attorney, or anybody else, to perform.

SENATOR FISHER: That's right. That is why you can't sign a dismissal in behalf of your client, that is why you can't appear for him without his full understanding and authority, insofar as the court will permit it. You can't perform the adoption even in a restricted sense without the signature of the parents, and so forth, you see. Isn't that correct?

MR. MAYERS: That is what I am driving at, yes.

SENATOR FISHER: No attorney is permitted to do this in any of his fields, is he?

MR. MAYERS: That is correct.

SENATOR FISHER: No attorney can perform the personal functions, even though he is an attorney, and stand in the stead of --

MR. MAYERS: That's right. That's right.

SENATOR FISHER: So the rule you are giving me applies in every instance of the practice of law?

MR. MAYERS: Yes. In many instances, yes.

SENATOR FISHER: All right.

MR. MAYERS: I was going to give you a summary of some of the examples of what happens when doctors and lawyers serve as intermediaries, agents, to make the arrangements in an adoption proceeding. And I am not going to be talking essentially of the ring, the baby broker. I am going to be talking of me and thee.

Doctors and lawyers who do these things are almost without exception well meaning, at least at the beginning of the adoption process. But once the natural mother seems to hesitate in giving her consent to a family that has been selected by the doctor or lawyer, the doctor or lawyer frequently begins to feel that his own selection, his own judgment, is being questioned. Frequently, for example, the doctor --

SENATOR FISHER: Excuse me just one more minute.

MR. MAYERS: Yes.

SENATOR FISHER: Does this differ in an adoption case beyond the advice an attorney gives or doctor gives in anything in which he is employed in a professional capacity?

MR. MAYERS: No, I think this is in the nature

of the beast.

SENATOR FISHER: All right. There is no distinction here in this field as opposed to any other field of practice in the profession?

MR. MAYERS: No. No. Frequently a doctor has sought to find a child for his patients because he has been unable to, in his efforts, help them have children of their own. This is one of the things that leads a doctor to actively assist his patients in locating a child for adoption.

So, once the mother now starts withdrawing her consent, indicating that maybe she would like to have this kid back, the doctor himself, in his own relationship with his client, frequently feels threatened, that his own judgment, his own selection is being questioned, and all of a sudden he begins now to realize that the mother doesn't know what is good for her. And so we start encountering threats to withhold money collected for boarding care, maternity care, the requiring of an agreement to repay money advanced, the threat to refuse return of the child until or unless the money is repaid, threats of publicity, threats to get in touch with the natural parents' family who do not know of the child.

SENATOR FISHER: Let me ask you one further question here.

MR. MAYERS: Yes.

SENATOR FISHER: All of these are unprofessional conduct under the Business and Professions Code, really, aren't they?

(Senator O'Sullivan assumes the Chair.)

MR. MAYERS: With respect to the medical profession, Senator, I am not at all sure. The grounds for discipline of a doctor are not this broad, it is my understanding.

SENATOR O' SULLIVAN: Mr. Mayers, I think we will



take our usual 3:00 o'clock recess for five minutes, if we may interrupt you.

(Short recess.)

CHAIRMAN RATTIGAN: The subcommittee will be in order. It has been invited to the attention of the Committee that Dr. Rosenstein, who was a scheduled witness, will have to leave shortly so we are interrupting Mr. Mayers and putting Dr. Rosenstein on for your presentation.

DR. ALBERT J. ROSENSTEIN: I sent prepared statements on ahead, but if I can, I would like to speak extemporaneously.

I did a dissertation at the University of Southern California for my doctorate. It was finished in 1959 and the doctorate was granted January, 1960.

The dissertation took over two years, approximately two and a half years to do. The comparison was between the agency adoption, private adoption and natural parents.

The sample size was 30 private adoption cases gathered from the files, randomly from the files of pediatricians, O.B.'s, general practitioners, some attorneys. The agency adoption sample was gathered from files of pediatricians who were made aware of the fact that a child had been agency adopted. This was done after I was turned down by four agencies in the Los Angeles area, in personal contact via the University, and after letters were sent out to every adoption agency in the State asking for their cooperation through the University.

The natural parentssample was gathered randomly from the community at large, from doctors' offices, attorneys' offices, and so forth.

Psychological tests were given, the

Minnesota-Multiphasic personality inventory, the most widely used screening device in the United States since 1943; the Locke Marital Adjustment test, and the role conflict test.

The doctors sent out a letter asking for their patients' cooperation. When the patients indicated that they would cooperate, the name was turned over to me, I went out, contacted the people, did the psychological testing, the social history, and so forth.

The results of the tests were put on IBM cards, in the IBM Corporation through Western Data Processing, who made their computers available to us, the cards, computer, staff, and so forth.

The results were then put into the computer and revealed that the private adoption sample showed far less psychopathology. There was no index of emotional illness, whereas in the agency sample there was a great index of emotional illnesses. These were people who had adopted children within three or four years' time back.

The marital adjustment tests, the only people who scored below previously determined criteria for poor marital adjustment, and this criteria was not established by myself, but by Harvey Locke, and Burgess, and Wallren, people throughout the United States who are considered the authorities, the only people to fall below these previously determined criteria were within the agency sample.

The private adoption sample, as a matter of fact, showed a better index of marital adjustment and less behavioral problems than even the natural parents did. And these were randomly selected.

The criteria for giving a child certainly is family adjustment, behavior adjustment. Yet these two factors were not held constant. Allegedly, the social agency, their

function is to determine a good home. A good home is comprised of emotionally sound parents and parents who are adjusted in terms of their marriage. And this didn't exist.

SENATOR CHRISTENSEN: Mr. Chairman? Is it proper to ask a question as we go along?

DR. ROSENSTEIN: Please, sir.

CHAIRMAN RATTIGAN: Yes, go ahead, Senator.

SENATOR CHRISTENSEN: Doctor, you have referred to the fact toft these involvements in agency adoptions. Just to clarify my own mind, isn't it true that the agency in California must take every child that is in effect relinquished for adoption? Isn't it also true that in comparing this sample with another sample that you have a more select group in the independent adoption?

DR. ROSENSTEIN: I think that independent adoption very definitely is a selective criteria. The peoples' ability to afford independent adoption, for one thing; secondly, the area from which we drew the samples was a selective criteria. And for this reason the University and several other individuals at this point are getting ready to launch a large study, State-wide study, via USC, to expand this one, blow it up, and study the same factors.

SENATOR CHRISTENSEN: My thought was that there is no question about that, but isn't it true that by reason of the fact that the agency must accept every child relinquished for adoption and attempt to place that child for adoption, obviously they are confronted with, you might say, not the same favorable material for placement that the independent agency would have, apart from the factors that you suggested.

DR. ROSENSTEIN: This is certainly true but, Senator, do we write the child off by placing him in the home that isn't best because we have the child? At this point, which



would be better, which would be sicker; to put the child in a sick home --

SENATOR CHRISTENSEN: I am not arguing.

DR. ROSENSTEIN: No.

SENATOR CHRISTENSEN: I am just trying to show there is an element such as we have mentioned here that we legitimately do find reflected in the sample.

DR. ROSENSTEIN: What you say is correct. They have a preponderance of children and they have got to place them and so they are taking second best in some cases. Second and third best, as a matter of fact.

The proposal that came from the study on the part of several faculty members at USC, myself and some other interested researchers, was the possibility of establishing a center, either State run, State operated, or privately operated, apart from the Department of Social Welfare - and this is a necessity - which would do the psychological testing, the social history taking, the interviews, and so forth, and give the individual some sort of a bill of health, so to speak, which would make this parent eligible to adopt a child and have the courts enforce this. This is not being done now.

If the study is correct, and there is every reason to believe it is because I certainly haven't been -- nobody has come forth to criticise it yet, then there is something lacking. For interviews with a social worker, who, according to the Attorney General's office, has been trained, this doesn't constitute a knowledgeable situation concerning a parent.

SENATOR FISHER: What you are saying is that there may be reasons why the agencies have a tougher time because their requirements under law are that they take everybody, and there may be a reason why the adoptive adjustment isn't as good as it is, or as your study would indicate in the independent agencies.

But this is no reason why the independent adoption should be criticized if in fact the evidence shows that there have been good adoptive adjustments as a result of the independent situation?

DR. ROSENSTEIN: That's right.

SENATOR FISHER: Even though Senator Christensen's analysis is correct, that the two are not, that you don't have the homogeneous sampling, or homogeneous universe throughout the entire field, at least it shows that some of the criticism aimed at the independent adoption isn't merited on the evidence shown by the examination of the independent adoptions themselves ex post facto?

DR. ROSENSTEIN: The Library of Congress, Senator, was checked for research, anything having been done in adoptions where they compared private and agency adoptions. As of 1960, there wasn't one study done which would compare, and yet we have the general run-of-the-mill feeling among members of various social agencies that one is poorer and one is better, and it is always theirs that is better.

SENATOR FISHER: We are all entitled to our opinions.

DR. ROSENSTEIN: Yes.

I brought along with me "Patterns". I don't know if you gentlemen were familiar with the alleged research that took place on the part of Parke-Davis and Company, and I would like to leave this with you, if you would like.

There was a little six-question questionnaire that was included in one issue of "Patterns", published by Parke-Davis, a little tearoff card asking six questions and asking for check marks. On the basis of that, a whole issue on adoption was done. The 5,000, or over 5,000 cards that were sent out were sent out to doctors all over the United States.

And they took the first 5,000 that came in, and at that basis they analyzed it and they added it numerically, tabulated it, and took a position.

I feel that a radiologist is not concerned with adoptions; that an orthopedist cares less about it, except as an interested observer. He certainly wouldn't place himself in a position of taking a stand, knowing anything about it.

And the girls in the reception office, the ones that apparently filled out some of these, cared less or had no vested interest.

This was the survey that I have been told about when I presented this paper at the Sterility and Fertility Convention. And on this basis, this is the only position that the agencies take.

I would be willing to gladly go back and gather a larger sample with their cooperation. But nobody has come forth. And USC's Department of Social Welfare is quite strong with Dean Johnson as the head.

CHAIRMAN RATTIGAN: Questions? Comments?

SENATOR FISHER: Did we interrupt you in the middle of what you wanted to say?

DR. ROSENSTEIN: No. No, I dare not take a strong position.

CHAIRMAN RATTIGAN: We have your complete written statement, a copy of your study, Dr. Rosenstein.

DR. ROSENSTEIN: That's right.

CHAIRMAN RATTIGAN: Which are very useful.  
Thank you very much.

DR. ROSENSTEIN: Okay. Thank you. Would you like this, incidentally?

CHAIRMAN RATTIGAN: Yes. Dr. Rosenstein has now submitted the July and October, 1961 issues of "Patterns



of Disease".

Parenthetically may I remark, while I think of it, that we have a letter from Supervisor Ernest Debs, Los Angeles County, explaining his absence, containing his comments, and which will be incorporated into the record of the proceedings.

"Honorable Joseph A. Rattigan, Chairman,  
Subcommittee on Adoptions, Senate Committee on  
Judiciary, Room 4031, State Capitol, Sacramento 14,  
California.

Dear Senator Rattigan:

"This is in reply to your letter of November 22, 1961 with reference to the Los Angeles hearings of the Subcommittee on Adoptions of the Senate Judiciary Committee on December 5th and 6th.

"In view of my inability to appear in person, I am pleased to set forth the situation as I understand it with reference to improper adoption practices in this County.

"As you undoubtedly know, in 1960 the Los Angeles County Grand Jury returned indictments against one doctor and four attorneys for conspiracy to violate Section 181 of the Penal Code, Sections 1620 and 1640 of the Welfare and Institutions Code, and Section 224q of the Civil Code, all relating to the placing of children for adoption.

"One of these cases (People vs. Lax and Benson, Los Angeles Superior Court Criminal No. 236913) was actually tried and resulted in a hung jury. Thereafter the recommendation of the District Attorney was that while violations of law had occurred, the office had tried the strongest of

the cases and that it was doubtful that the prosecution of the remaining cases would be any more successful than the prosecution of the first case.

"It is my understanding that evidence of the following alleged illegal or unethical practices was produced:

"(a) Employees in an attorney's office contacted doctors by telephone to ascertain whether they knew of any babies that were or would be available for adoption, and also contacted parents who had previously adopted children to find out if they were interested in adopting additional children.

"(b) Advertisements were inserted in newspapers, advertising for expectant mothers to perform light housework, and expectant mothers applying for such work were directly or indirectly through business cards referred to specific attorneys. The attorneys reimbursed the prenatal care homes for the cost of the advertisements.

"(c) Expectant mothers were offered payment for referrals to specific attorneys of other expectant mothers.

"(d) Mothers were advised to conceal or alter facts with reference to nationality, religion, status and other relevant facts concerning the father of the child to be placed for adoption from the adoptive parents.

"(e) Moneys collected by attorneys from adoptive parents for prenatal care and other expenses of the mother were not actually paid

to the mother.

"(f) Fees charged adoptive parents, for both medical and legal services, were far in excess of the reasonable value of the actual medical or legal service rendered and it may be assumed that such fees constituted compensation for other than legal or medical services as such.

"(g) Money which had been promised to the mother in payment for expenses was not actually paid until the mother had signed the consent to adoption, usually more than six months after the expense had been incurred.

"(h) Hospital infant release forms were signed by the mother in blank and without any knowledge on the mother's part of the person who was to receive the child from the hospital.

"(i) Adoptive parents were seldom given any breakdown on payments made to the attorney for other than legal services.

"I am sure you will agree with me that the practices referred to are not conducive to adoptions which are in the best interest of children and if these practices are not illegal under existing law, the law should be amended to prohibit them.

"The full resources of the County of Los Angeles and its personnel will be available to you and your committee in your effort to find a fair and just solution to this very difficult problem.

"Sincerely yours, Ernest E. Debs, Chairman."

CHAIRMAN RATTIGAN: Go ahead, Mr. Mayers.

MR. RICHARD L. MAYERS: Gentlemen, I would like



to discuss with you for a moment the problem of dual representation which frequently goes hand-in-hand with the problems of the anonymous independent problem. I am sure the Committee is aware of the American Bar Association's statement. But I would like to read to you, if I may, the paragraph in the publication brought out by the Continuing Education for the Bar. It is being revised. You heard the discussion of that. But the existing, the present volume, reads as follows with respect to the role of the attorney in independent adoptions:

"The peace of mind and success of an attorney in handling an adoption will be in direct proportion to his ability to abandon the role of an adversary and to adopt a non-partisan approach to the problem presented by the individual case. His real client in the proceeding is the child to be adopted. For that reason he should not allow himself to feel that he is representing one party against the other. Fundamentally, the lawyer must accept the natural parent as his client just as much as he accepts the adoptive parent."

Our office, because of the statutory function given us, has that contact with cases in which the mother has refused to give her consent and indicated a desire to return her child.

I would like to describe to you some of the things that the attorneys have done when faced with situations like that.

The major thing that they do, of course, is delay. Let's get a continuance, let's think about the matter, and by this time people can be worn down, or the matter can be disposed of. Delay is the major tactic.

They institute actions to have the mother declared unfit by using the birth of this very child as evidence of unfitness. Frequently they attempt to retry the divorce case, the party is still around, they are always very angry with each other, they can almost retry the divorce case if there has been a divorce in the preceeding period.

Frequently they dismiss the petition, letting the petitioners retain custody of the child without any legal proceedings, or they institute a guardianship proceeding by doing it in another court, another county, or frequently they go out of state.

And we have cases where the attorneys have facilitated, assisted their clients going out of state, finding attorneys for them out of state, and the adoption is consummated elsewhere.

In another case the family simply moved down the road into another county and had the child made a ward of the Juvenile Court by a probation officer who was friendly with the adopting parent.

This is when the mother is petitioning in another court to have her child returned to her. This is the case of Marr versus Superior Court, a reported case.

Let me give you three cases that came to me just in the last two or three weeks in which the mother indicated to the adopting couple that she had decided not to consent to the adoption of her child and that she now wished her child returned to her. Let us examine the role of the attorney who, according to the Committee on Continuing Education for the Bar, "Accepts the natural parent as a client just as much as he accepts the adoptive parent."

SENATOR FISHER: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: Are you going on? I didn't want to interrupt you in the middle of that.

MR. MAYERS: That is quite all right.

SENATOR FISHER: You used the terms "frequently" and "often", and so forth. Are you indicating this is the normal practice, or that this can happen and sometimes does happen?

MR. MAYERS: I would say, Senator, that it happens with some frequency. I don't know how to -- we are drawing on an experience of several attorneys over a period of maybe eight, nine, ten years. I would say when we have cases that come to us involving attempts by the mother to withdraw consent, we find these practices that I am reporting to you occur with some frequency.

SENATOR FISHER: We know of attorneys who have told people they will take care of something in the criminal court and post bond for them and let the bond be forfeited and they stand, in essence, convicted. This is not proper practice. This is not the way an attorney ought to operate. And we could say it happens with some frequency.

MR. MAYERS: Well, that is essentially what I am saying.

SENATOR FISHER: Yes. Are you putting it in that sort of a category?

MR. MAYERS: Yes. Yes.

SENATOR FISHER: Or are you saying this is the common practice, or that we will legislate for the normal procedures, not for exceptions? We can't ever catch all the exceptions in the Legislature, as you very well know.

MR. MAYERS: I am really trying to emphasize the problem that --

SENATOR FISHER: You say these are problems



that we ought to concern ourselves with.

MR. MAYERS: That's right. That's right.

SENATOR FISHER: Because they can happen in this situation, not that this is what they frequently do or most often do, or this is the pattern of practice. This can happen.

MR. MAYERS: Well, it is more than that, Senator. I only cite cases that go sour. I want to make this clear to you. We get involved in the bad ones. And this conduct happens frequently in the bad cases.

I am not saying the bad cases are numerous. But when they turn sour like this, this sort of conduct is far from infrequent. I don't know whether I have said it any differently.

These cases all came to our office in the last two or three weeks. In the first case, an attorney being informed of the situation, did nothing. He didn't inform the adopting couple that under the provisions of the Civil Code the court is required to return the child to the mother. Nor did he inform the natural mother of her rights under the section.

In another case the attorney advised the adopting couple not to return the child. Frequently this is done with full knowledge that the natural mother is without an attorney, without funds, lives in a different part of the country, county, state, thus is effectively prevented from instituting a writ of habeus corpus, or even knowing how to set the adoption matter for hearing or representing herself at that hearing.

This has happened in cases where the attorneys for the petitioners have frankly indicated to me that, should the natural parents seek a writ of habeus corpus, the court would have no alternative but to grant such a writ.

In the third case the attorney filed and obtained an ex parte order for the temporary custody of the child and simultaneously filed a petition for abandonment. The

attorney did not tell the judge whom he sought to obtain the temporary ex parte custody order form of the pending adoption proceeding or the pending refusal of the natural parent to consent, or the Department of Social Welfare recommendation of denial, nor did the attorney inform the adoption court that he had sought and obtained an ex parte custody order or instituted an abandonment proceeding.

No notice is required under the present law, thus none was given to the Department of Social Welfare, which is charged by law with representing the interests of the child in this matter. But all of these actions were wholly designed by the attorneys to render ineffective the adoption investigation and the proceeding in the hearing.

Society, you, the taxpayers, have all invested time and money and skills in the investigation of this proposed adoption, and in the counsel of the natural mother and meetings with the adoptive parents. Yet the attorney was able to render completely useless this substantial investment of the taxpayer's money.

SENATOR FISHER: Would you say it was a professional matter that he violated his oath of office and his obligation to the court and his obligation to society, and in many instances violated the rules of professional conduct?

MR. MAYERS: I have grave doubts as to whether the State Bar would regard such conduct as constituting a ground for professional discipline.

SENATOR FISHER: No, I am just asking whether you think he violated it.

MR. MAYERS: I don't believe the rules of professional conduct are sufficient at this point to warrant, to give reasonable chance of a discipline being imposed. But this is the problem of dual representation that we have.

SENATOR FISHER: Do you think he has violated his oath of office and his obligation to the court?

MR. MAYERS: Perhaps.

SENATOR FISHER: You jumped over my question and said what you thought he would be convicted of before an administrative tribunal.

MR. MAYERS: What I am directing this to, Senator, is the fact that the State Bar has not yet taken a position on dual representation. I think once they do that, once they make it clear among themselves, a group of professional people, then this matter will be much more capable of solution.

SENATOR FISHER: So that would be one of the things which you would recommend as clarifying this issue and making it more amenable to rectifying the avaritions, as I gather these are.

MR. MAYERS: That is correct. That is correct. I think Mr. Leavitt points out, there is the problem of what is dual representation that is the vague one.

But I wanted to point out to the Committee what happens in those cases where things go sour. Certainly, when everything is sweetness and light, none is concerned with the problem.

CHAIRMAN RATTIGAN: Was there dual representation in this third case?

MR. MAYERS: I don't really know. I know the mother is without an attorney.

CHAIRMAN RATTIGAN: You didn't say so, and your statement doesn't say so.

MR. MAYERS: I don't honestly know, Senator. I know the mother is without an attorney. That is really all I know.

CHAIRMAN RATTIGAN: You conclude in the



rhetorical portion of the paragraph on Page 7, after reciting the facts of the case, you say, "Is this the sort of dual representation that we favor?"

I don't know whether it is or not because I don't know whether there is any dual representation in the case.

MR. MAYERS: That is a perfectly legitimate -- in this last instance, Senator, I simply do not know. But I think my comments, that this comment, is this the sort of dual representation we favor, might well apply to some of the other instances, certainly.

CHAIRMAN RATTIGAN: All right. Go ahead.

MR. MAYERS: Having been involved in some of these cases for many, many years, I can recall, and I tell you senators I have checked with the other deputies in our office who handle these problems in Southern California and the San Francisco area, we can't recall of any case in which an attorney has wholeheartedly and exclusively represented the natural parent after that parent has taken a firm position opposed to that of the adopting parents. Each and every time where the issues have become joined, the lawyer ultimately has sided with the source of the fee.

Now, I am talking, of course, of those cases where the attorney is being paid by the adopting parents. I hope you understand this assumption in this statement.

Now, lawyers and doctors frequently seek means whereby they may obtain a professional social worker, a county welfare department worker, a licensed adoption agency worker, to make a pre-placement investigation or informal investigation shortly following placement, but prior to the filing of any adoption petition. We have inquiries come to our office over and over again. "Can you tell us a good social worker?"

"I got a family and we want to make sure they

are okay."

This appears to be a pretty salutary desire on their part. Yet I know of no cases in which these doctors and lawyers who do this have agreed in advance to abide by any such recommendation that they are requesting.

It frequently appears to us that they are merely seeking the comfort of a supporting recommendation and a means of shifting the responsibility and blame if the thing should go wrong.

I suggest that society might be adequately safeguarded from the excesses permitted by dual representation if detailed reporting were required by the courts of the circumstances surrounding the financial aspects of dual representation.

Society might be further protected if, by statute, a public official, specifically, the office of the county counsel, were authorized to give legal advise to and represent natural parents who are otherwise without sufficient funds to retain their own counsel.

I have great qualms about the practice of calling in an attorney down the hall as an accommodation service to provide any separate, distinct legal representation for the natural mother. This representation is frequently of a very cursory nature.

I recognize that this representation of the natural mother is a task that might properly be handled through lawyer reference services and on occasion these services have provided attorneys and have done a very effective job. But unless and until these services are sufficiently equipped to provide such representation as a matter of course, I suggest that the interests of society in general might be served if you provided an adequate and separate representation to both parties

in an adoption proceeding, and have this done through the specifying by statute that when the occasion demands, the office of the county counsel is legally authorized to provide this service.

I don't think it will be an onerous burden on him. I don't think the cases will be great in number. But I think there should be somebody that the mother can go to to provide this, and think society's interests warrant this.

SENATOR CHRISTENSEN: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: In the case of a withdrawal of a consent to adoption, I think that is what we are speaking of here, in an independent adoption, as I understand from the paper, the Department is charged with the duty of representing the child.

MR. MAYERS: That is correct.

SENATOR CHRISTENSEN: And therefore the natural parent, if she wishes to withdraw the consent, isn't that correct?

MR. MAYERS: Not always, Senator. I will be frank to say that normally the Department feels that the natural mother's rights to the child are paramount, but this is not always the case at all. We have many, many cases in which the mother has petitioned to withdraw consent and the Department opposes the petition. The mother knew what she was doing, saw the child in the home, and this would not be for the best interest of the child.

SENATOR CHRISTENSEN: In any event, the Department is involved in the case at that point?

MR. MAYERS: Yes. Yes.

SENATOR CHRISTENSEN: In behalf of the child?

MR. MAYERS: Yes, required by the law to recommend to the court.

SENATOR CHRISTENSEN: And in the case of its



duty to the child, in the event it is of the opinion that the consent should be withdrawn, necessarily it takes the burden of representing or assuming the position of the natural mother who wishes to withdraw the consent, isn't that correct?

MR. MAYERS: In those cases where the Department recommends that the mother be allowed to withdraw, we are, by virtue of that recommendation, in a sense siding with the mother's petition, yes.

SENATOR CHRISTENSEN: That's right.

MR. MAYERS: Yes, sir.

SENATOR CHRISTENSEN: In any event, the Department is before the court to represent the child and the best interests of the child.

MR. MAYERS: That's right.

SENATOR CHRISTENSEN: So the only thing that we are talking about here are the rights of the mother who, apparently, opposes what the Department feels to be the best interests of the child.

MR. MAYERS: Well, what I have been addressing myself to, Senator, is our awareness of the lack of adequate legal advise available to the natural mother.

SENATOR CHRISTENSEN: Doesn't the Department afford that adequate legal advise in determining what the best interests of the child are?

MR. MAYERS: Well, I think, I hope, Senator, that the illustrations that I gave to you in which the mother is subjected to these various writs and delaying tactics, and the like, are the type of things that no department can protect it from. The Department is not the mother's attorney. We don't appear in abandonment actions.

SENATOR CHRISTENSEN: But it is the child's attorney, isn't it, in that case?

MR. MAYERS: No, the Department doesn't appear in abandonment actions, or -- we don't even get notice of them, Senator.

SENATOR CHRISTENSEN: But where that stems from the withdrawal of consent, the Department is before the court and its duty is to be before the court?

MR. MAYERS: In an adoption proceeding. But in the cases I have described to you --

SENATOR FISHER: The adoption proceeding may have been dismissed.

MR. MAYERS: Dismissed or discontinued.

SENATOR FISHER: You have been ousted from jurisdiction and have no place to get a foothold again.

MR. MAYERS: Yes. Yes. Yes.

SENATOR CHRISTENSEN: In any event, I mean the position that when the adoption proceeding is dismissed or no longer pending, the Department is in the court to defend the interests of the child, is it not?

MR. MAYERS: That is correct.

SENATOR CHRISTENSEN: Either with a legal proceeding or without a legal proceeding?

MR. MAYERS: I don't know if we can do it without a legal proceeding, is my problem. I am suggesting to give consideration that by statute any action filed involving the custody of a child involved in an adoption proceeding, that notice be given to the adoption court and to the Department of Social Welfare, and we know of these things and can take such steps as we think appropriate, the adoption court deems appropriate, to bring these competing court actions together so they know what is happening elsewhere.

Judge Koenig has done that by rule in the Los Angeles Superior Courts with an affidavit requirement that the

court be notified of the filing of any petitions. This is only county-wide, or really in his court.

SENATOR CHRISTENSEN: Do you believe if a state-wide law were passed that required such action in the particular court --

MR. MAYERS: Salutory.

SENATOR CHRISTENSEN: -- it would relieve this situation?

MR. MAYERS: Very salutory. Require the parties to an adoption to be required to notify the adoption court of the filing of any other action bearing on the custody of this child.

SENATOR FISHER: Well, Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Fisher.

SENATOR FISHER: What sort of protection would that give in the situation where, let's assume the natural mother does in fact deliver the child personally.

MR. MAYERS: Yes.

SENATOR FISHER: To the home of the prospective adoptive parents, and the prospective adoptive parents then get in this situation and they do dismiss. How does this rule of court, even if it is made state-wide, how does this give anybody else any standing in court?

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MR. MAYERS: Well, that problem isn't so bad, Senator. We have a statute now that where the parties petition to dismiss the action they must notify the court, and the court sets the matter for hearing. The proposal to dismiss the petition is subject to the court, the court retains jurisdiction over the child and they make such order for the child's best interests as the court deems appropriate.

Now, frankly, most Superior Court judges are amazed at this decision, can't believe it really is there and hesitate to use it because the idea of them being able to prevent somebody from dismissing a petition is fairly unusual.

SENATOR FISHER: But insofar as one of these circumstances that you have related that came in the last three weeks, there is already a law on the books. It just wasn't enforced.

MR. MAYERS: That's right.

SENATOR FISHER: But it was there already. So it could have been taken care of if the judge had wanted to retain jurisdiction.

MR. MAYERS: That's right.

SENATOR FISHER: And assure himself that nobody was being shoved around in the situation.

MR. MAYERS: Well, what they did, Senator, when they heard that the adoption was going to be denied, they filed, got an ex parte order in abandonment actions, but the adoption proceeding is still on calendar somewhere, but it is pretty much of a -- we have informed the court and the judges and they are all going to bring the cases together for one hearing. This is because we happened to hear about it.

But there was no notice required. I am suggesting formal notice, that the adoption court--

SENATOR FISHER: As a technical matter, would that

be proper plea in abatement, the next action?

MR. MAYERS: I don't know. I don't know. I think, yes, probably under the Marr Case, where the court -- where the child was made a ward of the Juvenile Court and the District Court said the Adoption Court had no power to require that child's presence in the adoption hearing.

SENATOR FISHER: Would you go so far as to suggest that as long as a proceeding in adoption had been initiated and had not been dismissed under whatever conditions the judge of original jurisdiction wanted to set, would you suggest that any other proceedings relating to the custody and control or status of that child ought to be without jurisdiction?

MR. MAYERS: No, Senator. There are certainly cases, and I am not suggesting that other courts be ousted from jurisdiction. Let's say the child becomes a juvenile delinquent problem and needs the care and custody of the Juvenile Court proceedings. But I think the Adoption Court should know about it. I don't suggest ousting other courts from jurisdiction, no.

SENATOR FISHER: Well, you bring up the other situation which the other court may not know about.

MR. MAYERS: I think first I would like to take it step by step.

SENATOR FISHER: Take an older kid, and the probation office brings him into another court the other end of the state, it has no knowledge that anything is pending.

MR. MAYERS: Well, I can't solve that one. At least where there is knowledge I would like to get that knowledge.

SENATOR FISHER: All right. All right.

MR. MAYERS: The next question, I want to just address myself to it very briefly as to whether attorneys and physicians should be exempted from the licensing requirements, and if so why, and if not, why not.

I don't believe they should be exempted for the reason that there is nothing in the training received in a medical school or law school that is designed to train the doctor or lawyer in home finding or child placing. Inherently, a psychologist or well-meaning neighbor can do the job just as well.

Private and tax supported agencies, we have heard testimony to this, spend twelve, \$1400 and devote one-third of their staff time and funds to counseling natural parents prior to accepting a relinquishment of a child for adoption. Few, if any, doctors or lawyers have the time or the knowledge or training to devote this much of their practice to counseling natural mothers. Yet apparently society, through its licensed charitable tax supported agencies, has found this substantial investment of time and money and skills to be worthwhile.

If this \$1200 in an agency adoption proceeding does not include medical or legal fees, what is it buying? And if it is buying something, where is that something, where does it exist in the independent process?

SENATOR FISHER: Well, let me interrupt you once more. We set up all kinds of programs which are available for those who want to use them. We don't make it mandatory that everybody use up the \$1400 worth or the \$3500 worth of the services that may be available if they want to use it.

MR. MAYERS: I am not suggesting this.

SENATOR FISHER: They are a social problem, and many of them are of equal importance to this. We don't mandate that everybody sop up all the service available. That is a welfare state, and we don't have one in that sense.

MR. MAYERS: You understand that I am in no sense implying that the agency program become mandatory in any sense. I am just indicating that here is money being spent by the taxpayer for something, and let's try and think through



what it is being spent for and whether it is being spent for something that is worthwhile. And if it is being spent for something that is worthwhile, how do we provide that, or something akin to that service, in the independent process?

I am not suggesting that anybody become the agency.

SENATOR FISHER: Or for those that want it.

MR. MAYERS: Yes. Well, more than that, Senator, society has an interest in this. We don't permit people to sell cattle the way they want to. We require testing and TB and all sorts of requirements before they can transfer title. So it isn't just what they want. Society has an interest in this.

And all our whole adoption law is designed to protect society's interest in it, knowing that many of the parties are essentially unrepresented, the child in particular.

So it isn't just a market place. We have an interest in this.

SENATOR FISHER: I think we have an interest in everything that we have statutes or programs on.

MR. MAYERS: That's right.

SENATOR FISHER: That is the only basis on which they are constitutional, isn't it?

MR. MAYERS: That's right. That's right.

SENATOR FISHER: That is no argument at all. Go ahead. Excuse me.

MR. MAYERS: Now, I would like to recall to you that you remember in 1954 when there was a good deal of discussion about this problem, and the State Bar Committee went into this, they adopted a resolution, the State Bar Board of Governors, in 1954, in which they reiterated their long-standing position that "lawyers have a legitimate and useful place" in the field of independent adoptions. And that resolution was used, I

won't say to justify, but it was the basis for the introduction by the State Bar of three bills. Two of them are well known. They were designed to exempt doctors and lawyers from the provisions of the Civil Code and Welfare and Institutions Code prohibiting placement without a license.

But the third one is not so well known, and I would like to call it to your attention. The third bill was Assembly Bill 1640. This was designed to amend the Business and Professions Code Section 9000 relating to social workers in the practice of social work, and the amendment introduced by the State Bar in 1955 read as follows. This is the Section:

"This chapter of the Business and Professions Code constitutes the chapters on social workers. It is a new enactment and is to be liberally construed to perfect its objectives.

"Nothing contained in this chapter shall be deemed applicable to a physician or surgeon in connection with his practice."

I have some question as to whether the practice of social work is an inherent part of the practice of medicine, just as I have a question as to whether the inherent practice of social work is an inherent part of the practice of law. I have a feeling that when one attorney calls another for brotherly advice, the advice sought is the name of a prospective adoptive couple or the name of a woman who has a child available for adoption.

You asked whether the penalty for violating Section 1620(b) in the Civil Code, should be increased. It is a difficult problem. I am not sure of the answer. It is true that prosecuting officials will be quite reluctant to expend the necessary time and effort needed to adequately investigate and present a case involving a mere misdemeanor where the facts

are normally as complicated as they are in these placements situations.

It is pretty true that juries will be hesitant to bring in verdicts of guilty if the offense is made a felony. But the success of the Penal Code is not to be measured by the number of prosecutions or convictions obtained under it. It is measured, and properly so, by its deterrent effect. It is for this reason and this reason alone that I believe the offense should be made a possible felony reducible to a misdemeanor in less aggravated cases.

I would like to suggest more importantly, however, that the problem be dealt with by the appropriate medical and bar associations. You recall that in -- I don't recall the year, 1950 something, when the Senate Judiciary Committee went into this before, and they suggested that the matter be dealt with by the bar and medical associations. Remember, they reviewed the opinion and thought there was no need for legislative clarification, but that the appropriate professional associations could handle this problem.

Since that time, we all know there has been a good deal of questioning, what does the attorney general opinion mean, and what does "placement" mean, and the like.

As a result, there has been essentially no action taken by these associations in devising or making rules of professional conduct in saying whether this is placement and this isn't.

We appeared before the State Bar Committee on Adoptions and when they were told that one attorney handles a large number of adoptions, O.K., so he is a specialist. If his fees were big, he is a specialist and entitled to charge large fees.

So any one element was separated and no one or



group of activities were treated as constituting improper conduct.

Now, Mr. Burch testified just a short time ago, and if I recall his testimony, I made a pencil note here, he said that Judge Koenig, when he appeared before the State Bar Committee, presented various cases. I do not know, but let me assume, if I may, that the cases were essentially the ones that Judge Koenig presented today. I don't know this. But, assuming they were, or that they were similar, Mr. Burch stated these cases did not reveal any transaction considered by the Committee as unreasonable or improper.

SENATOR FISHER: Excuse me.

MR. MAYERS: Now, I don't know that they were the same transactions.

SENATOR FISHER: I think he pointed out that the top costs indicated by the judge were six or \$7,000, and when appearing before the Committee, the top one that he testified to was \$2200, where only up to 50 percent of that cost was attorney's fees. He was just pointing out that the judge did not indicate when appearing before the Bar Committee such figures as he testified here.

MR. MAYERS: I see. I just didn't know that, you understand, and that is what I was concerned with.

I have talked to Judge Koenig, contacted General Mosk, and we are desirous of having these cases that Judge Koenig presented as well as the ones he presented previously to the State Bar Committee, submitted to the State Bar Committee on professional discipline.

If Judge Koenig will make the necessary orders to reveal the necessary adoption files that may be necessary to review these department cases, then the Department of Social Welfare will release their regular placement orders on them so

it may appear before the committee on professional discipline.

But I would submit that you consider the adoption of legislation spelling out the grounds for professional conduct rather than waiting for the State Bar to adopt them. I think it would be easier if this Committee after this study indicate the type of conduct they think should be grounds for professional discipline.

SENATOR FISHER: In an adoption case?

MR. MAYERS: Yes. And I urge that if you do this, that the statute be phrased in terms of committing certain acts rather than in the commission of a crime; that is, do not require the institution of a criminal proceeding prior to the presentation of the matter to the professional discipline committee.

CHAIRMAN RATTIGAN: Does Judge Koenig have any statutory authority --

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: -- to release this information?

MR. MAYERS: Yes. Yes. It can only be released by permission of the Judge. He is the only who does have the statutory authority.

CHAIRMAN RATTIGAN: Is there anything in the statutes giving him the authority to do that?

MR. MAYERS: I believe so, Senator. Just one moment. I can't put my finger on it just this moment, Senator, but I will immediately after I conclude my testimony.

CHAIRMAN RATTIGAN: 226m?

MR. MAYERS: What?

CHAIRMAN RATTIGAN: 226m? Are you looking at the Civil Code?

MR. MAYERS: Well, I'm looking at the summary from it, Senator. 226m, I think that may well be it. No, there is another section, Senator, I think that -- oh, 227aaa.

Well, just a moment. Yes.

CHAIRMAN RATTIGAN: Yes?

MR. MAYERS: No.

CHAIRMAN RATTIGAN: No?

MR. MAYERS: No. Let me look for it, if I may, and I will get it for you, I assure you, before I leave the room.

SENATOR CHRISTENSEN: Mr. Chairman?

CHAIRMAN RATTIGAN: Senator Christensen.

SENATOR CHRISTENSEN: Mr. Mayers, in connection with your last suggestion, I think that suggestion has been brought up several times in the last day or so as to whether we should have recourse to legislative action in defining professional misconduct or unethical practices.

MR. MAYERS: Yes.

SENATOR CHRISTENSEN: So far it hasn't jelled in any particular form of proposed legislation.

Do you have any particular form of proposed legislation?

MR. MAYERS: I don't, Senator. I will be happy to give it some consideration, but I presently do not.

SENATOR CHRISTENSEN: Would you submit that to the Committee?

MR. MAYERS: Yes.

SENATOR FISHER: In addition, fees; do you feel that should be a matter of presumption, as suggested by Senator Christensen?

MR. MAYERS: Mr. Sloss, I think.

SENATOR FISHER: Senator Christensen this morning. And would you recommend that that also be a matter to be a part of such professional conduct rules?

MR. MAYERS: Yes, Senator. I think that would



be a very good place to start with the use of Mr. Sloss' suggestions on those presumptions. I think they are relevant, at least in terms of shifting the burden of proof. It seems to me that large fees, a large number of cases, the having of a social worker in your office, that sort of thing bears on the reasonable probability that the attorney is doing a good deal more than practicing law, but is engaged in home finding.

And I suggest to the Committee that your attention be directed to the words "home finding". You are concerned over defining "placement" and how thin to slice it and that will be avoided, I think, if you recognize that there is this law, you may want to clarify it as to what is home finding.

It seems to me that the connotation we are objecting to or talking about is home finding. And this isn't so hard to find. And this is what I think the conduct that we have been talking about is.

SENATOR FISHER: Isn't it better to do that than raise presumptions that puts any attorney who spends any particular amount of his time and tries to become competent, puts him in jeopardy every time he handles another case? His jeopardy increases each time he involves himself in a case in which --

MR. MAYERS: It doesn't sound logical, Senator, but in actual practice we find that attorneys, when they become specialists in this field of adoption --

SENATOR FISHER: I am asking about the specialist who complies with every reasonable rule that you would have him comply with, and you nonetheless put him under the burden, an increasing burden with each case he handles, and his increasing competence, and if he complies one hundred percent with the things you want, you increase his chance of disbarment each and every case he handles.

MR. MAYERS: Provided --

SENATOR FISHER: By the method, by the sole method of that proceeding.

MR. MAYERS: Provided you agree with me, Senator --

SENATOR FISHER: And you never get back to the facts. You raise a presumption, but you let those stand in lieu of the facts and make him prove each time. And he comes in about three or four times and sometime you are going to get him.

MR. MAYERS: Yes, provided you agree with me --

SENATOR FISHER: It is just like trying, regardless of the fact, and that is the point I am making, regardless of the fact, you let it stand in lieu of the fact. It is just like taking any one of us as attorneys and bringing a proceeding against us on some set of total presumptions, which this amounts to, and you bring that proceeding before a jury and we might get a hung jury the first time, or get acquitted the first time, but you come back and the next time we hold the case and before our term on this earth was up, we would all be disbarred.

MR. MAYERS: Well, Senator --

SENATOR FISHER: Simply because you are rolling dice with fate on that sort of a thing. You have got to get back to proving a fact, and you have got to prove it by the evidence of the facts, not by presumptions.

MR. MAYERS: I will agree with you that on the face of it, just adding presumptions sounds a little horrendous. I will admit this. However, --

SENATOR FISHER: And you know just exactly that is the way some convictions are gotten, sometimes, in some kinds of cases. I am not talking about this kind of case. But that happens, and you know it, and you would be adding a worse burden in this part of the practice than any place else in the law that I can think of.

MR. MAYERS: I am willing to place that burden

there, Senator, providing you agree with me that the law prohibits attorneys from engaging in the placing or home finding --

SENATOR FISHER: Oh, that very obviously is an open question.

MR. MAYERS: All right, but if you will grant that assumption, that the law does now or should prohibit an attorney from engaging in the placement or home finding for adoption, then certainly it seems reasonable to say that if he is engaging in a large number of adoptions, the likelihood of his engaging in home finding or home placing, or adoption placing, is very real. And it is evidenced, and the number of cases is grounds on which a jury or a group of members of the State Bar could reasonably assume that the burden now shifts to him to show that this is not what he is doing.

SENATOR FISHER: Now, you are talking about raising a presumption. Don't you in fact, if your logic is correct, come in and use that as evidence, circumstantial evidence in any event, don't you?

MR. MAYERS: Yes.

SENATOR FISHER: All you are doing is shifting the burden and not having to prove it.

MR. MAYERS: That is all the presumption does, is shift the burden.

SENATOR FISHER: You make it easier for yourself to prove by circumstantial evidence without having the evidence, with a presumption, as I see it.

MR. MAYERS: Well, perhaps so. That is what all presumptions are designed to do, really. When you find narcotics in the car --

SENATOR FISHER: On the subject of fees, wouldn't your control be a lot more legitimate if you just required the judge to look at the fees and let him set the fees, or review



them as he does a divorce case?

MR. MAYERS: Well, I am not so concerned about fees per se. This is but an indicia of a whole process. The fees themselves may be perfectly reasonable.

SENATOR FISHER: I am trying to take it out of the indicia. I am letting the judge look at each individual case. You are saying it is an index of something and I am saying why shouldn't the judge be permitted to take a look at it and review it and reset the fee if he feels it is an unreasonable one and not reasonably related to his services as an attorney and those things reasonable and necessary to the performance of his duties?

MR. MAYERS: Because I am directing my attention not at the reasonableness of the fee, but at the conduct of the attorney in whether he is placing or home finding.

SENATOR FISHER: If you are saying they are unrelated, then it shouldn't be a presumption.

SENATOR CHRISTENSEN: May I interject a comment, Senator. I think we are looking at a different point in time. The conduct in question is the placement, which appears long before any judge has a occasion to fix any kind of a fee. And a suggestion that was made was that in the event there be a presumption, it would be limited to the exaction of a fee that would be exorbitant to the extent, or a charge for the services other than legal services, and limited to what the reasonable value would be. It did not encompass in any way any of the other suggestions that it be a presumption as to the number of cases handled by the attorney.

MR. MAYERS: Yes. Yes. I am not concerned with the reasonableness of the fees as much as I am if the fee is for legal services or home finding or placement, you see. This is what concerns me, whether the fee is an indication of

other than legal practice.

Once again we are assuming our differences, Senator, as to whether it does involve a part of the legal practice. I recognize this.

As to whether the term "placement" should be clarified, if you agree with the Attorney General's opinion, it doesn't need clarification. And if you don't agree with it, or if you are in doubt as to how far it goes, certainly it needs clarifying. I can't do any more than say that.

One of the matters that I would like to call your attention to, Senators, is this business of this presumption and the receipt of amounts and the necessity of an accounting. I have here in my statement a statement that has been submitted by an attorney to a client, and I would like to read you, if I may, just the billing that the client received.

"Preparation of pleadings; appearance in court; handling with Department of Social Welfare; arranging for signing of consent to adoption by natural mother," X number of dollars.

A separate item in the billing:

"Interviewing and securing and verifying data on parents' background to enable you to reach final decision; writing up report covering such background material," another amount.

"Expense: Cost of investigation, including securing birth, marriage, death and other records for the Department of Social Welfare, and to verify data on parents' background."

CHAIRMAN RATTIGAN: What is your point there,

Mr. Mayers?

MR. MAYERS: I think this raises the question as to whether some of this conduct is the practice of law,

is what I am suggesting.

CHAIRMAN RATTIGAN: I understand your point to be concerned with the amount.

MR. MAYERS: No. I am concerned here with Mr. Sloss' suggestion of presumptions, and he was suggesting that the receipt of amounts that cannot be accounted for as payment for genuine professional services was one of his suggested presumptions that it would be an indication of conduct other than the practice of law.

CHAIRMAN RATTIGAN: Is there anything in this specimen bill here that is not the practice of law?

MR. MAYERS: The necessity of interviewing and securing and verifying data of the parents' background so as to enable the presumably adopting couple to reach a final decision, it seems to me, implies that there may well have been a placement arranged by this attorney. Certainly the parties don't know one another.

SENATOR FISHER: Not necessarily not part of the practice of law, is it? Just taking the items listed there on the billing --

MR. MAYERS: Well, on the face of it, Senator. But the indication --

SENATOR FISHER: Are you saying it might be something other than what it says it is?

MR. MAYERS: Oh, certainly. Yes, very definitely. And all Mr. Sloss suggested was that where there is an accounting that demonstrates that there are services, that there are payments received for services other than professional matters, for professional service, this raises a presumption, not a finding, not anything conclusive.

SENATOR FISHER: You slipped off the point again.



MR. MAYERS: I am sorry.

SENATOR FISHER: The item raised, the item which you raised there is not other than the perfectly legitimate practice of law in that sort of a situation, isn't it? Read the item again.

MR. MAYERS: "Interviewing; securing and verifying data on parents' background to enable you to reach final decision."

Now, how would his clients -- why would they be involved in making a final decision, Senator, if there hadn't already been a placement made?

CHAIRMAN RATTIGAN: I can answer that. I adopted a child myself and I had an attorney. I certainly expected him to secure and verify data on parents' background to enable me to reach a final decision. He didn't place the child. But I certainly wanted him to do that. I considered that a major part of his professional responsibility. And he didn't place the child at all. He had nothing to do with it.

MR. MAYERS: Well, there may be cases, a fair number of them this way. But we have found frequently that when the attorney is busy providing his clients with information about the natural parents it is because the natural parents and his clients don't know one another. The only person who knows one another is the attorney or the doctor.

CHAIRMAN RATTIGAN: Which is another point, really.

SENATOR FISHER: Well, Dick, a man who handles personal injury cases could have that same sort of a listing.

MR. MAYERS: Yes.

SENATOR FISHER: An investigation of the circumstances, and so on and so forth of the accident, and interviewing the witnesses, and so forth.

Now, this is perfectly legitimately a part of

the attorney's work. He would do it himself and charge for his time, or he has somebody in his office, or somebody that he hires especially to do that part of the thing. But that is part of the preparing of a case, part of the preparing of your case and advising your client how to proceed in the circumstances, isn't it?

MR. MAYERS: That is correct.

SENATOR FISHER: Now, that same sort of an itemization might cover up the hiring of an ambulance chaser, might it not?

MR. MAYERS: That's right.

SENATOR FISHER: Are you suggesting that every time an attorney has a legitimate charge like that you could say it could be something else, and therefore, because you have charged for something else, that you ought to put the attorney in jeopardy because he itemizes something which is legitimately an extension of his historic function?

MR. MAYERS: I think the reason --

SENATOR FISHER: You get this all involved in the emotionalism of the fact that this is an adoption.

MR. MAYERS: No, I think I am involved --

SENATOR FISHER: But it is analogous to 101 other situations in the practice of law where the fee is perfectly legitimately charged for services that are necessarily a part of performing your final act of appearing in court and advising your client as to what his final decision ought to be, to go ahead, to back off, to settle; whatever it may be in a legal situation.

You can't do it in a vacuum. Any attorney that tries to do it in a vacuum, or just by sitting down and thumbing through some books or contemplating his navel, can't possibly properly advise his client, can he?

MR. MAYERS: No, Senator. But the difficulty is that so frequently the attorney is the only party, or the attorney or the doctor is the only party who knows both parties. And that his primary service in the adoption is not the drafting of a petition, which is fairly elementary. It is not the verifying of marriage and birth certificates, which is done by somebody in the Department of Social Welfare anyway. His primary role frequently is the selecting and finding of a home for his clients. This is what happens.

Now, either you want to pass laws saying he can do this, that this is proper --

SENATOR FISHER: It does happen sometimes. Ambulance chasing happens sometimes. But you don't --

MR. MAYERS: But this happens on a great degree, Senator. This is not the periphery of the situation. This is the situation. I am not talking of the rare case. I am talking of the ordinary case.

SENATOR FISHER: I tried to get you to say that earlier in your testimony and you wouldn't say this was a pattern, or anything else.

MR. MAYERS: I was talking there about the conduct in the withdrawal situation. But if you want me to say that in the normal situation -- well, not normal, but it is usual, let's put it this way, for independent adoptions to be arranged by other than a natural parent. And by that I mean doctors, lawyers, cab drivers, friendly next door neighbors.

CHAIRMAN RATTIGAN: We are right down to the heart of the matter now again, raising the question of definition.

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: Do you consider that an



attorney is home finding or violating Section 1620(b) of the Welfare and Institutions Code if a typical unwed mother asks him if he knows - I am getting into your Attorney General's opinion, too, but this hypothesis is this - asks him if he knows of a couple who are interested in adopting a baby, and he says yes, and she thereupon, after a full disclosure of this couples' characteristics and capacity to care for the child properly, she relinquishes, and I use that word because that is another agency word --

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: Say the child was born, she signs an infant dismissal report, she knows their names, she has not met them. She is releasing the child to this couple. The attorney didn't engage in any selection process, he answered her question affirmatively and he told her all about these people, and then she did it. She did it.

Now, is that attorney violating 1620(b)?

MR. MAYERS: Let me answer your question two ways. I will answer it.

CHAIRMAN RATTIGAN: Yes and no, is that it?

MR. MAYERS: No. I more than anticipated such questions, and in discussing this in our office they said, "Don't answer the question. If the Committee has doubts to the answer, tell them to amend the law." That is my first answer.

CHAIRMAN RATTIGAN: You might tell us who "they" are.

MR. MAYERS: The various deputies in our office who are working in this field. That is the first answer.

The second answer is one that I gave to a similar question before the Assembly Interim Committee. Your factual situation is a little different than the one we dealt

with in the opinion, and we always get facts that are a little different and we always try to tell them we are not going to try to tell you how thin you can slice it.

SENATOR FISHER: This is a bare-boned one.

MR. MAYERS: Yes.

SENATOR FISHER: And you are a judge sitting in judgment.

MR. MAYERS: But the heart of your question, Senator, as I see it, is that they didn't meet.

CHAIRMAN RATTIGAN: That wasn't the heart of my question as I asked it.

MR. MAYERS: If they had met, you wouldn't have asked the question, Senator. If the parties had met, you would have had no doubts that this was all right.

CHAIRMAN RATTIGAN: No.

MR. MAYERS: I wouldn't have had any doubts, let's put it that way.

CHAIRMAN RATTIGAN: I am not concerned with this ritualistic significance to a meeting.

MR. MAYERS: Well, this is what I was concerned with, Senator.

CHAIRMAN RATTIGAN: A lot of witnesses have testified that they must meet, or should meet, and it becomes ceremonial.

MR. MAYERS: That is correct.

CHAIRMAN RATTIGAN: You can hire a couple of actors and go through an episode in your office and that would cover it for the record.

MR. MAYERS: That's right. I wanted to cover that. I am glad we both see eye to eye on this one.

CHAIRMAN RATTIGAN: Maybe they met, maybe they didn't. But let's assume for my question that they did not,

and let's assume further that I still would have asked the question whether they did or not.

MR. MAYERS: Yes. I don't know. I don't know. The answer is that the word, the law is in doubt in this area. I am ducking the problem. We have thought of it. I just don't know.

SENATOR FISHER: Do you think he ought to be?

MR. MAYERS: I will leave that one to you. I have pointed out the problems, I think, of anonymity.

SENATOR FISHER: We take the question down to the bare fundamentals and you don't know whether it is a violation, you can't advise us as to whether it ought to be a violation?

MR. MAYERS: This is your job as legislators. We are here trying to figure out legislation, and I am telling you I don't know.

SENATOR FISHER: You are here to give us your best advice. You handle a lot more of these cases than any of us have, obviously. We are asking your advice.

MR. MAYERS: I am concerned, Senator, over the existence of anonymity in the situation. This is the thing that bothers us frequently. I believe that if the parties are in a position to make an intelligent decision themselves --

SENATOR FISHER: And meeting is only one of the circumstances.

MR. MAYERS: Yes. I personally would insist on meeting because the absence of meeting makes for an anonymous adoption, and that is independent -- it is not only essentially an agency adoption at that point.

CHAIRMAN RATTIGAN: You would in what capacity insist on a meeting?

MR. MAYERS: I would insist that the parties



meet primarily to avoid the problems that I have found where they don't meet.

CHAIRMAN RATTIGAN: You would insist on this if you were what, the attorney?

MR. MAYERS: No, if I was the legislator.

CHAIRMAN RATTIGAN: Suppose you were the adopting parent? Would you insist upon a meeting?

MR. MAYERS: Senator, this is something that people disagree with, and I don't know how you can settle the matter.

In my own personal judgment I think an adoption will be more secure for both parties if the parties meet, that the adopting mother -- that the natural mother recognizes that she is dealing with a live couple that have love and affection for her child and she will no longer have her -- her guilt feeling will be somewhat diminished.

CHAIRMAN RATTIGAN: Whose guilt feelings?

MR. MAYERS: The natural mother's.

CHAIRMAN RATTIGAN: Who says she has guilt feelings?

MR. MAYERS: Well, I am no psychologist. I didn't want to get myself using this jargon.

CHAIRMAN RATTIGAN: Well, I am not either. What is this guilt? Is this another rebuttable presumption?

MR. MAYERS: All right, I should have known better. Let the social workers use their own jargon. I will stick to my -- but I don't know how to other than say that in my judgment I think the adoptions work out better when they meet.

Now, you recognize that when I am saying this we are all recognizing that in a heck of a lot of them they don't meet.

SENATOR CHRISTENSEN: They never do in an agency adoption.

MR. MAYERS: No, I assume we are talking about independents here, dependents here.

CHAIRMAN RATTIGAN: We will get to agency in a minute.

MR. MAYERS: The mere fact that we are discussing this question recognizes our mutual assumption that in most, or not most, but in many independents they don't meet.

SENATOR FISHER: I want to be quite clear. You don't have an opinion in the hypothetical circumstance, the bare bones circumstances recited by Senator Rattigan? You don't have an opinion as to whether or not that is a violation of that code section? Your answer to that was you don't know, and the second one is you have no advice to give us as to whether or not it should be a violation?

MR. MAYERS: Senator, you put me in a very difficult position. We devoted a great deal of time and thought to the preparation of the opinion years ago on a hypothetical. I really prefer not to ask essentially a similar question on harder facts at the table here. We will be happy to prepare an opinion on the matter, but I think it deserves more thought than I am truly able to give it, or that you really deserve at this point. You have asked a hard one. You know you have.

CHAIRMAN RATTIGAN: Well, you gave a pretty hard answer the last time. I am not pursuing a semantic proposition here, but I am talking about a context in which you propose to create three rebuttable presumptions and a contention in which you propose to make violation of this section a reducable felony. And when we come right back to the heart of the matter, you don't know in this hypothetical

situation of fact whether the section is being violated or not. And your fellow deputies, they said if we are uncertain, we should amend the law.

MR. MAYERS: Yes.

CHAIRMAN RATTIGAN: If we are uncertain, I can't possibly conceive of making a felony out of it. Or I can't possibly conceive of raising three rebuttable presumptions of guilt if we are uncertain as to whether the section is being violated in this hypothesis.

MR. MAYERS: Then you go along with our other suggestion, if you are not sure what all this means, that you would endeavor to clarify the law by the use of such words as procuring, or referring, or assisting, you see.

CHAIRMAN RATTIGAN: No one said we weren't sure. You are the one who isn't sure.

MR. MAYERS: All right. Touche.

CHAIRMAN RATTIGAN: The Committee asked the question and you said you weren't sure.

MR. MAYERS: Yes. Yes, Senator.

If I may, I wanted to read you a few cases. You asked under question No. 8 whether we have knowledge of specific cases of illegal, improper placement.

You have them before you. I just wanted to emphasize that the Department of Social Welfare has eight file drawers full of what they call irregular placement reports; reports prepared by social workers who work on adoption matters. Every time the social worker thinks there is something - I will use the word "fishy" - they are asked to provide, to prepare a report. I discovered to my amazement that there are eight file drawers of these reports.

SENATOR FISHER: In the whole State of California accumulated over what period of time?



MR. MAYERS: I don't know, Senator. I don't know how long they have been accumulated.

SENATOR FISHER: This is on a lay person's opinion that something may be "fishy"?

MR. MAYERS: Yes.

SENATOR FISHER: And there may be something illegal about it?

MR. MAYERS: Yes.

SENATOR FISHER: There lay opinion as to what the law is, I gather?

MR. MAYERS: Well, we all get lay opinions in this without any court cases, apparently. I mean, what do we go on? These people work in the law. This is their daily operation. What they think is irregular you may differ with, I may differ with. We haven't any cases on this.

I would like to, if I may, Senator --

CHAIRMAN RATTIGAN: Please do. Would you conclude as quickly as possible?

MR. MAYERS: Yes. I will just be one moment. These reports indicate, as I say, I quoted two or three, you will recall, the parents say that the doctor made the placement, the adopting parents say that the doctor makes the placement, the doctor states it was made between the petitioners' attorney and the adopting parents.

You will find many, many, many such reports contained in these irregular placement reports, and these reports are largely quotes from the adoption investigation made.

SENATOR FISHER: Without anybody agreeing as to what the word "placement" means?

MR. MAYERS: I think that, Senator, it can be indicated when they say they arranged the placement they imply

they were brought together, they were brought to a doctor --

SENATOR FISHER: Getting people together is not making a placement, now.

MR. MAYERS: No, but it may be home finding, Senator.

SENATOR FISHER: This is the very crux of the matter.

MR. MAYERS: Yes, it may not be placement, but it is probably home finding. When Mr. Leavitt says that his clients want a child and then doctors and attorneys call him saying if he has a client that wants a child --

SENATOR FISHER: Bringing people together is home finding?

MR. MAYERS: I regularly --

SENATOR FISHER: You know of two people, one of whom is your client, seeking a common point of discussion, and you let each of them know. Then you say that is home finding?

MR. MAYERS: If you are doing it in the business, Senator, isn't that the statute? Doesn't the business statute say that if you are engaged in the business of home finding it is a misdemeanor?

CHAIRMAN RATTIGAN: No.

MR. MAYERS: No person, association or corporation, without first having a license, shall engage in the finding of homes for children for adoption. That is what it says.

CHAIRMAN RATTIGAN: All right, go ahead.

MR. MAYERS: That is all, Senator.

CHAIRMAN RATTIGAN: Any further comments or questions? Thank you, Mr. Mayers, both for your testimony and for your indulgence in bearing with us. You have been

waiting a long time.

MR. MAYERS: Thank you, Senator.

CHAIRMAN RATTIGAN: Mr. Shearer.

MR. DON SHEARER: Senators, I would like to correct one error, if I may. The agenda has listed me as a representative of the Independent Adoption Association. I was formerly a member of this organization up until some time in, I would say, around April this past year. I am not now. I am appearing before this Committee as an adoptive father in one capacity, and also as an attorney who handles some adoption matters. And I am happy to hear that there is a member of this Committee who has also had experience with adoptive children personally.

I have four adopted children. I have one experience with an agency. I have one experience with an independent adoption situation where I happened to mention that I met the natural mother and knew her, talked to her on four different occasions from a length of one hour to three hours. I have no feeling personally one way or another as far as this meeting matter is concerned.



I think a lot of it is sob story and a lot of it hypocrisy. If the mother wants to meet these people, I think that is her right under the law as it is today. If she doesn't want to and the adoptive parents don't want to, I think that is also their privilege.

I think it is a grave error if the attorney attempts to influence either party whether he represents one or both individually, in making that decision, or any other decisions. That is one of my prejudices, I call it. I try not to have too many.

In some of the cases, workers with the Department, they attempt to supercede their judgment; perhaps, I don't want to sound sacrilegious, but in an attempt to play God in these adoption matters.

I was raised in somewhat of a prejudiced religious home, very conservative Protestant religious home. I was taught that Catholics and Jewish persons were something not quite right. When I got a little older and got a little legal training, not social welfare, but legal training, I objected to that sort of thing.

I try to fight these sort of things. Mr. Heath is seated in the back of the room, the Director of the Bureau. I don't think he would want to call me a friend. I think he does a good job. He might be surprised like Dr. McNeil to find that I have referred several natural mothers down to him, and several adoptive couples down to his office, situations where I felt it was a matter which should be handled by a state agency.

I have submitted a statement to the Committee. I don't want to belabor the time. I have a client here from San Diego. It is about the fourth person from San Diego here today who has been good enough to come up before this Committee.

It is very difficult to get adoptive parents to

come and testify before a committee such as this, adoptive parents who have had children through independent adoption. This fear of this publicity that we have seen in the papers before, and one thing I personally, as an adoptive father, aside from an attorney, would like to see stopped, I think possibly this disclosure we have been talking about, and possibly a severance of the investigative functions of the State Department of Social Welfare might accomplish that.

I would like to cover briefly, if I may, some of the comments that were made here by various witnesses.

Senator Christensen, who is not here now, raised this question this morning about referring, finding, or procuring.

SENATOR CHRISTENSEN: I am here, Mr. Shearer.

MR. SHEARER: Oh, I beg your pardon. I thought it was Senator O'Sullivan.

I think Mr. Mayers answered that question for you awhile ago. I don't think I have to elaborate on that.

I was somewhat surprised this morning to hear that the evidence presented by Judge Koenig yesterday indicated a range of some \$1200 up to 2270. I appeared before the Grand Jury here in Los Angeles about a year ago. I also appeared twice in Sacramento before the Assembly Judiciary Committee last year, once, incidentally, at my own expense, because at that time this lush black market independent adoption association ran out of funds and didn't have any money to pay my aircraft transportation to Sacramento, so I paid it out of my own pocket.

In any event, along about the latter part of 1960 the papers and some testimony before the Grand Jury had these fees involving some 7,000; I think one paper had 10,000.

I thought I was a cheap skate out here in Redondo Beach - I am not from Beverly Hills - in the fees I charge. But as time has gone by and we get down to the meat of this thing, it

has come down now in the paper and the testimony here to a range of some 1200 up to 2270.

I would prefer not to discuss my fees with you gentlemen other than to say I have never exceeded an attorney fee beyond what Mr. Burch considered to be a top, and what Judge Koenig's figures considered top. I have gone below the \$300 range that Judge Koenig has indicated to be the minimum in these irregular cases, I believe, that he submitted to you yesterday.

I would like to comment on this. I don't know whether it is direct testimony, but apparently there is some feeling on the parts of some individuals that some of these activities, although they might not be crimes, ipso facto would not be subject to discipline by the State Bar. I can't speak for the medical profession. I am not sure I agree with Dr. McNeil on this point, but I can assure you that I do not agree as far as the State Bar is concerned and I think I can speak from experience there.

I have had the unfortunate position of having to be a prosecutor for the State Bar to prosecute one of my fellow attorneys. I have also defended an attorney before the State Bar.

At the present time I am a member of Administrative Committee No. 16 of the State Bar of Los Angeles County and I think we have some 30 down here to examine violations by lawyers, so the State Bar does take some action against attorneys. It amazes me a little, or makes me wonder why these irregularities that Judge Koenig has referred to have not been referred to the State Bar, I don't think there is any evidence they have been referred to the District Attorney's office or the Attorney General's office. I may be in error as to the law, but it is my understanding that the violations of the law should be prosecuted by the Attorney General's office, and I think we have a competent one.



Again, I don't agree with Mr. Mayers' position, but I think we have a competent Attorney General's office in this state, who have investigative facilities. The District Attorney's office in Los Angeles County I think has competent investigators, and I am sure the State Bar would look into this.

The question of whether it is to be high fees, and that point, Senator Fisher, it is my opinion from handling some of these cases before the State Bar that excessive fees, whether it be adoption cases, 60 percent contingent fees on automobile accident cases, or charging a fee on workmen's compensation, which is a violation of the law, moral turpitude, I think, of Section 6108 of the Business and Professions Code. Incidentally, the soliciting is Rule 2, and Rule 2-A of the Business and Professions Code, which prohibits soliciting.

SENATOR FISHER: It is also in the Business and Professions Code.

MR. SHEARER: I think so, both. So I do believe the State Bar would take action if there are violations of the law.

I talked to an official of the State Bar here some year ago. I am not at liberty to disclose his name. He was not a member of the Board of Governors. He indicated the State Bar had requested from the Los Angeles County Bureau of Adoptions cases where they considered violations on the part of the attorneys to exist, and up to that time no cases had been reported in Los Angeles County or had been referred to them.

I don't know, perhaps there is jurisdiction in the State Department of Social Welfare to investigate and prosecute. I question that. I know of nothing on the statute books that gives that.

My understanding is that their job is to investigate, at least independent adoptions, investigate the suitability of the

adopting parents, whether the home is a proper home, whether or not the consent of the natural mother is fully and freely given, that she has been advised of all her rights, and by that I mean her legal rights to keep the child if she wants to keep it. The right to perhaps tell her that birth certificates in this state, there is no stigma attached to a birth certificate. You can't tell whether a child is illegitimate.

I think the mother should be told that. We are not living in 1899.

I have had clients that go out of my office that want to keep that child, and I don't try to influence them. I promise you that. Every two women that walk into my office I say one of them walks out and I have nothing further to do with them. They go to an agency, they decide to keep the child, or we bring a little coercion, and I will use that word, against the natural father to marry her. That is not my decision. She decides it.

By doing it, we may wind up in a divorce. But I am not a social welfare worker and I don't think I have a right to interfere with the decision of that mother. If she wants that child, wants to do this, the man upstairs is the one that allowed her to conceive, and I don't think I have the right to impose my thinking on her decision. I don't think an attorney or social welfare worker who interviews a natural mother, the first time they talk to her, make sure she does all she wants to do --

SENATOR FISHER: If they did do it, they would be practicing law without a license, wouldn't they?

MR. SHEARER: Yes, I imagine they would be. Mr. Mayers says a doctor is not inherent in their work a qualified social worker. He did not state the opposite of that, as to whether a social worker, and I am referring to somebody who has perhaps a master's degree in social welfare, is qualified to

practice law or medicine.

Again, I said I prefer not to deal in personalities, but I had a little disagreement with the Director of the Los Angeles County Bureau here the latter part of last year. This question of the fee business. I have taken the position that I as an attorney am obligated to disclose to the court the full nature and extent of my compensation, including my fees to the court, not to the State Department of Social Welfare. They are entitled to know any considerations going to the mother, and I don't care whether it is money, hospital bills, or anything else, because that could affect her decision.

But I don't think that the State Department, under existing law, has a right to inquire into my fees.

This particular case that I am referring to, the case worker in Long Beach interviewed my clients, the adopting parents, and said that they had to disclose my fees. They refused to do it. They disclosed all the other financial arrangements. This particular case worker wrote a letter, I presume he wrote a letter to Mr. Heath, either that or called him. The Director wrote a letter to my clients stating that apparently their attorney, meaning me, had instructed my clients to withhold information which, under the law, they were required to obtain. That I had forbidden them to disclose financial arrangements. Didn't say anything about breaking it down between attorneys' fees and otherwise.

I wrote a letter back to Mr. Heath. I explained my position. I said I feel that under the present law that it is a proper inquiry to inquire as to what may have affected the mother's decision, but I said I don't believe that you are entitled, or the case worker is entitled, to my fees.

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Mr. Heath wrote back. This wasn't under the county counsel, incidentally, Mr. Fisher. He said that his

opinion of the law was that I was required to devulge this. This case happened to be pending before Judge John McCarthy down in Long Beach.

Because of this uncertainty we have been hearing about here since I have been here today, I wrote a letter to Judge McCarthy. I enclosed photostatic copies of all the correspondence. I presume they are still in his files. I don't have that file here with me today. And I explained to the Judge my position in the matter, told him that if he felt there was anything improper about this, and this was some three months, I think, before we were going to court, that I would be glad to have his secretary or bailiff call me and I would present myself in his chambers and open my entire file to him.

Judge McCarthy didn't call me. When the case came to hearing before him, the case worker in the case had made a great to-do about the fact that I was withholding vital information from the Department. I had prepared an affidavit, just as I did, the only two times I appeared before Judge Koenig, I don't know where I sat on that chart, but probably some place down by the bottom because I don't get downtown too often, but, in any event, I had this affidavit prepared and I called the Judge's attention to it after the hearing was almost complete.

I said, "If the court please, I feel that there is possibly some suggestion here that I am attempting to withhold information which might be vital to this adoption."

So the Judge looked at the report and he said, "Counsel, in this case do you feel your fee was justified?"

I said, "I do."

He said, "I don't want to see your affidavit."

But I said it was there and I would have had no objections of giving it to him.

I am apparently running over, so I will skip over

this. Mr. Mayers has told us somewhat of this irregularities that he has seen on the part of attorneys. I have with me today Mr. Charles Parmalee, from San Diego, sitting right here in the middle of the courtroom. He is from Solano Beach, which I understand is a suburb of San Diego, or vice versa. He is 34 years of age, his wife's name is Lorraine. Mr. and Mrs. Parmalee applied for a child through the State Department of Social Welfare in San Diego in 1957. They were turned down after approximately, oh, three or four months, after several oral interviews.

The reason for the turndown, as indicated to them, and this was after, I think, about an hour's conference with the Department, was that Mrs. Parmalee had been in Camarillo State Hospital for a period of three months back in 1953. Mrs. Parmalee, the doctors' reports had indicated that this was brought about by reason of serious surgery on her part, and being upset. She was discharged. Incidentally, it was voluntarily. She placed herself in the hospital.

The doctors gave her a discharge, and I am not a doctor, I don't profess to do the doctor's function in these matters. She consulted a private psychiatrist in San Diego and was given a clean bill of health. Yet the State Department of Social Welfare says, "No, you can't do this." They didn't ask her to go to another doctor, didn't ask her to go to a doctor selected by the State Department. But the lady that talked to them last said, "Well, you come back in about three years and perhaps we will reconsider you."

Now, these people now have one adopted child that is two years old. It has the flu today, I understand, and that is why Mrs. Parmalee is not here. And they have another child that is in the process of being adopted at the present time. They are clients of mine.



As I indicated, the hospitalization in this matter was sometime back in 1953. I would certainly not take it upon myself to say whether she was a fit and proper mother or not. I think that is a medical question. But then, needless to say, the State Department, in San Diego, did take that position and did disallow it. Because of the fact that the natural mother resided here in Los Angeles County, the matter was referred up here to have the consent signed. The natural mother went down to the Bureau here about two weeks ago and again I am going to rely on what Mr. Burch said, this was probably just an error in judgment, or perhaps a typographical error from the information that came up from San Diego, but Miss Helene Clark, who was the investigator who interviewed and took the consent, asked the natural mother whether or not she knew Mrs. Parmalee had attempted suicide in 1959, which, of course, was absolutely and completely false. I will say it was mistaken, maybe a typographical error. Where the information got there, I don't know.

That, I think, is one of the points I have made, Senator Rattigan, in my closing remarks, as to why I feel that the independent adoption should be allowed to continue because, while I believe that the private agencies, those that are the religious agencies and the privately supported agencies, may have the right to impose their own particular rules and regulations, I think it is extremely bad when a state agency, and believe me, we are all human, they are made up of human individuals like you and I, but there is no right of appeal from a reject on those situations. It might well be that it might be better to have all adoptions handled by the state. I made this statement to the Assembly Judiciary Committee when I was up north in April, if this is such a matter of grave concern to the state. Let's take all of the profit, so-called, out of the adoptions completely and make it a complete state function. Abolish the private agencies,

even furnishing the legal services through the Attorney General's office. Then we can solve the problem that way.

I think it would be a grave error because, as I said, I think there are a good many people like Mr. Parmalee and his wife, and he is here today, who are qualified, not in my opinion but in the opinion of their doctor, to have children, that have been denied that right over the past few years.

If you have any questions, Senator, I will be glad to try to answer them.

CHAIRMAN RATTIGAN: No, thank you, Mr. Shearer. We will pass to the next witness.

It is unnecessary to point out that the Committee is dwindling. This is in view of the hour. I will keep going for as long as possible, and all of the testimony will be read and examined closely by members of the Subcommittee and the full Committee later on.

Is Mrs. Haynes present? Is Mrs. Gale with you?

MRS. EDITH HAYNES: Mr. Gale is here. He and I have met for the first time today, but I know he is here.

CHAIRMAN RATTIGAN: In the interest of time, why don't you both come forward? You don't have to testify in unison, but be seated there and be identified. Will you identify yourself for the record, Mrs. Haynes?

MRS. HAYNES: I am Mrs. Edith Haynes. Do you want an address, or why I am here?

CHAIRMAN RATTIGAN: Your locality generally.

MRS. HAYNES: I live in Alhambra and I am here because I am the mother of an adopted child. And I am sort of scared to death because I am the different one, I guess, as far as this goes. But I have come because I feel that this is a big problem, and that I would like to tell our story.

We received an unsolicited phone call asking if we

had ever considered adopting a baby. This baby was to be delivered Caesarean section the next day. The mother was looking for a home like us for the baby and did not want to go through an agency.

Maybe I should explain here a little further that the mother had had all her plans laid. It seems this was her second child. She was something less, about 28, 30 years old, all her plans laid and the family who was to take the child had a serious accident that happened to the other child which they had, and the doctor said, "You cannot take a baby with what you have now."

So, she appealed in the hospital, and her request for help was referred to a nurse who was a former minister's wife. I had been working with children with problems at the moment, and in some sort of a discussion group where we had discussed some problems it seemed that I had said - I don't remember this - something to the effect of defending an adopted child and his family.

When this came up, this lady remembered me and called and said, "By any chance did you and your husband ever think of adopting a child?"

Well, at that point we hadn't been looking for a baby and we knew little or nothing about adoptions. So we had contacted our attorney. He took care of everything for us. And an interesting thing in contrast with what has been said about experiences here, the natural mother paid the costs except for the hospital, which was less than \$100, which we paid. The actual adoption proceedings were \$125.

Then we became very interested in this whole field of adoptions very soon because so many people came and asked us about it and they gave us their reasons why they had been refused, because we said, "Well, why don't you go to an agency?" That certainly is what we would have done.



We had only been married two years at the time this call came and when we had been married three years we planned to go to an agency. And I have listed here various reasons that they gave us as to why, they told us why they didn't go to an agency.

I listed ones that I thought might be pertinent and of interest to you.

At this point I might say that after getting into conversations with various people, at the moment I know about a dozen children who are adopted through independent adoptions, two through ten years of age. And as near as I am capable of observing, they are happy and well adjusted families with a great capacity for love and good judgment.

The cost of these adoptions was reasonable. In the general area of ours. In conversations I have asked as well as I could without being nosey, and as soon as I could get to my file jotted them down.

In addition, I know a number of happy adults over 30 years of age who were adopted by independent adoption or a very similar process.

When sometime later my husband and I thought it would be nice to have a little girl, we decided to contact agencies a few years ago, and we were willing to accept a handicapped or foreign born or minority girl. Of course, my age ruled out the idea of having a baby. I mean of adopting a baby. I still have had my last miscarriage in February, but my age has something else to do with it.

After interviews, and so forth, a very pleasant case worker wrote us a letter to the effect that we were the kind of people she would like to keep on file, but there were no girls available at present. Get in touch later.

On a later occasion we were thoroughly studied

and a case worker drove out to our home to tell us we were denied. There was nothing we could do about it. So we accepted her logic as being final. She gave us an hour and five minute denial speech which was rather hard to take.

Now, I am not here to plead our case. I am here because our negative experience with case workers and agencies, as well as with case workers as being a foster home, because we have had a foster home child, seemed too frequent and too much like the experiences of many of the people to whom I have listened.

I am concerned with the welfare of children first, but I am also concerned with the couples who will be denied the privilege of providing homes for children if independent adoption is banned or if some of the tight levers that seem to be on independent adoption at the moment are continued.

Agencies and departments of social welfare children's division have a real service to render, but the image which too much of the public has of an adoption case worker seems to be that of a person who plays a role of God or has a God complex.

I want to say here that I do not wish to criticize any case worker individually, but either their training or the directives under which they work seem to give too many case workers this God complex, and the attitude of fault finding and trying unduly to direct other peoples' lives.

I wish that we had had tapes made of the conversations that we had with case workers, and they could be played back to you. And from what other people have told me, I wish that tapes had been made of some of these and they could be played back to you. If I thought I could do it, I would almost be willing to go through this again and have the tapes made so that the Committee might have them.

At any rate, the thing that I am trying to say to you is what much of the public whom I know seem to reflect,

and that is one of the reasons that I have been bold enough to come today.

Also, an interesting thing to me is that adoptive parents who have obtained their children through an agency tell me how they were advised far beyond the line of duty on child bearing by a case worker who had little or no experience with children, and another thing that has bothered many people is that case workers seem to entirely doubt whatever a petitioner tells them. A mother told me the other day, who had just received her second child by adoption, that she didn't think that either case worker she had ever believed anything that she told her about fees, and things of that nature.

After reading some of the existing laws and studying some 14 bills introduced into the 1961 Legislature, and reading the paper, Mr. Senator, I wonder if it could be the laws that I have allowed you to pass that have helped to create some of these problems.

And as has been pointed out today, and I got a little reaction today about yesterday, much of this goes so much further than meets the eye. Whatever has happened, the fact that would be petitioners have been sent away from case workers crushed and heartbroken is all the more reason why we need to remember the basic human worth of all humans, children and adults, both need to be handled with consideration. If adults are hurt, children will be hurt, too.

Some of the points which I see in favor of independent adoptions are:

1. I know of no other procedure through which petitioners can take home a four-day old baby. John Theban, head of Family and Child Services in Washington, D.C., and many others, advocate the earliest placement possible. Also, the



natural mother knows that her child is going to be placed immediately and not be languishing in some sort of a home for a year or more.

2. While money is not a chief consideration, and this is underlined, in my experience, independent adoptions are much less expensive and as you can see from what I said about my experience, the financial consideration is less.

3. Final decisions of independent adoptions are made by an impartial judge after a picture of the petitioners has been presented, not by one person or group of persons representing one point of view.

4. While I have read of black market, I do not know of any situation in which a child has been placed illegally or improperly, or where there is any lack of love, security and necessities of life to develop a child's potentials. I do not personally know of a child placed through independent adoption at a high fee.

We had the Adoption Institute mention that the fee was 1125 which, to me, is high. We are a middle-class family.

I would also like to point out purely from my standpoint that some doctors, attorneys, and even service men have sliding scales for their charges, so I can conceive of petitioners in a higher income bracket than we are paying more than we would or could pay for legal fees, medical fees, clothes, cars, and so forth, and adoptions, without any of it being black market.

The public never hears the story behind a black market. Was the child abused? Was the couple a good risk? Were the other parties criminals, et cetera?

The chief consideration is a home with love. I

do not see how independent adoption fosters black market, but I do believe that unrealistic and inhumane agency adoption procedures could well drive some people to black market.

CHAIRMAN RATTIGAN: Mrs. Haynes, may I interrupt you at this point? In view of the time, your statement goes on, I note, to make specific answers and comments regarding procedures, and it will stand submitted in writing, if you don't mind my cutting you off at this point. I would like to pass to Mr. Gale, because we still have one more witness after him. And your statement in full will go into the record.

I wonder if you could skim through this, Mr. Gale, if that is the proper term?

DR. HOYT RODNEY GALE: Well, there are some parts of it that I would like to read explicitly, because I don't think I can bring out the point clearly without doing that. Is the identification sufficient here at the top?

CHAIRMAN RATTIGAN: Identifying you as Dr. Hoyt Rodney Gale of Pasadena City College.

DR. GALE: Yes.

CHAIRMAN RATTIGAN: Yes, I think so. I want to inquire, though, are you a teacher?

DR. GALE: Yes.

CHAIRMAN RATTIGAN: All right. Go ahead.

DR. GALE: This is an experience of Mrs. Gale and myself. We have both been worried by the steady stream of publicity, mostly originating in agencies that have axes to grind, which is slanted to give the impression that all or most private adoptions are black market affairs. We realize that in any large group of human beings, including doctors and lawyers, there are bound to be some who are unscrupulous and will take advantage of any situation that is not safeguarded to keep them in line. But we believe it should be borne in mind

that the cases of private adoptions in which irregularities have occurred are a very small proportion of the total number, probably not more than a small fraction of one percent.

These should not be repeatedly cited as characterizing the whole system.

Furthermore, we believe that even in the cases considered the most flagrant abuses, no substantial evidence has been brought forth that the children or the community or even the adoptive parents have seriously suffered.

Black markets have been fostered by the agencies themselves, who have given out the impression that there are only two ways to get children, either through themselves or through black markets. And then they have set up rigid, unreasonable, impassable barriers before entirely suitable prospective parents who, therefore, cannot hope to get children through them. Thus they create ripe prospects for the unscrupulous to work on.

My wife and I had experience with social workers in the foster home program before we adopted our two children. Since these children are quite unlike, we are often asked about them, especially since they give evidence in public, as well as at home, of being unusually happy and well adjusted youngsters. I have no doubt that they are that way because Mrs. Gale has much love for all children and has devoted a large part of her time to the proper training and development of these two.

From such frequent contacts with entire strangers, as well as friends, we have been amazed to learn how many people have adopted children, ones we would never have suspected, and most of them from private adoptions.

Furthermore, it is worthy of note that these adopted children on the average seem to be better brought up than the average children who have remained with their natural parents.

On the other hand, the experiences we have had



ourselves and have heard of that others all across the country have had with so-called welfare agencies, have revealed almost invariably extreme arbitrariness and practically unbelievable stupidity on the part of the bureaus or the agencies. They are guided by psychological theories that, to put it leniently, are still in a formative state and have not yet caught up with the practical realities of life. And in addition, the theories and the outworn cliches of yesteryear are applied second hand by social workers of limited outlook who are not aware of the qualifications and limitations that even the originators of the theories would put upon them.

For instance, if you should ask the internationally famous anthropologist and sociologist Ashley Montagu what he thinks of the practice of some Los Angeles agencies of placing infants scheduled to be adopted with foster homes for a year before deciding what final parents to give them to, you would get an ear full.

More recently, under the pressure of competition with private adoptions, they have reduced this delay. The agencies seem to be unable to cope with such an intangible as human love and so they act on the assumption that the child, as well as the parents, can get along without it as well as with it, that it makes no difference whether this tie is interrupted or broken or not.

Yet weakening of this natural and vitally important asset can do more damage to the children and to the community in which the children will later become juveniles and later leaders, than any other attack on the general welfare.

The ages of prospective parents are the simplest and easiest data to ascertain about them when they apply. Hence, the agencies base their conclusions primarily on ages and do not even consider other qualifications unless a fixed age formula is met. Then they give secondary consideration to other matters,

though the ones that really count are usually beyond their scope.

I believe there is no adequate evidence to show that specially qualified older people have not or cannot bring up children with as great success as younger ones.

In some cases it is possible to recognize unusually qualified prospective parents. Yet in one instance the agency turned down a couple of that kind because one parent had an MA degree while the other had only a AB, and it was concluded that the difference in academic levels would cause too much tension in the family.

In the case of an adoption of a foreign child who would probably starve to death in the next few years if not adopted, or if the child survived would have no chance of rising out of the gutter, the agency concluded that it would be better for the child to remain where it is than be adopted by the applicants. In that case the applicants really had very superior qualifications.

I have been a teacher for 25 years, and I have had opportunity to observe the inadequate upbringing of many young people. I have seen, even in especially favored environments, high school students improperly brought up who just could not stand themselves, who could not stand being by themselves for a half hour without being amused, and yet who had not learned to apply themselves in any constructive way to earn the money it would take to amuse them. In them is a perfect combination for the development of delinquency.

Because many mothers are working, or for other reasons do not give their children the guiding attention that they need, the social health of our community is declining. It is of utmost importance to utilize all the willing, available superior talent that exists for the bringing up of children so that they may have attitudes of friendly cooperation and

desires to serve the community, and so as to offset the supply of those going in the wrong direction.

To rule these better parents out for trivial reasons is a crime against the public welfare. If the agencies and welfare bureaus should be given exclusive control over the situation, there can be little doubt they would become even more arbitrary and inept because they would no longer have to measure up to a competitive alternative, and no doubt also a true black market would develop.

CHAIRMAN RATTIGAN: May I interrupt you at this point, Dr. Gale?

DR. GALE: Yes.

CHAIRMAN RATTIGAN: Is it a fair summary of the rest of your statement that you definitely believe the independent adoption proceedings should be retained and that you believe further, in response to one specific question by the Subcommittee, that attorneys and physicians in private practice should be exempt from extra licensing requirements for making or assisting in the placement of children?

DR. GALE: Yes.

CHAIRMAN RATTIGAN: Again, I am sorry to cut you off, but in view of the hour, your statement in full will be in the record of the proceedings and if we may get to our next witness because of the press of time, why, we would appreciate your indulgence.

DR. GALE: Certainly.

CHAIRMAN RATTIGAN: Mr. Ludlam? Is Mr. Ludlam still here? Mr. Mitler?

MR. ERNEST A. MITLER: Would you want me to merely submit it, Mr. Chairman?

CHAIRMAN RATTIGAN: Well, I want to ask you specifically, I have read your statement and you have been



liberally identified in the testimony before the Subcommittee and I want to ask you specifically, when this Subcommittee or the full Committee next meets with the Subcommittee, probably in Northern California, San Francisco or Sacramento, likely, will you find it possible to attend?

MR. MITLER: If I am out on the coast. I work for the State of Nevada now and my contract expires around the first of the year. But certainly if I am in Nevada or California I would like to come. Be happy to come.

CHAIRMAN RATTIGAN: Your testimony is entirely welcome, but by reason of your experience, your identity, and your recommendations, I honestly believe that it is a matter of much more comprehensive interest than one member of the Subcommittee. This is not because you were shunted to the end of the line. It is because you were an added starter, so to speak. We didn't hear from you until a very few days ago, at which time we had already prepared an agenda.

MR. MITLER: When will the other hearing be, Mr. Chairman?

CHAIRMAN RATTIGAN: It will not be before the first of the year; definitely not. And I doubt if it will be before the short session which commences in February and concludes approximately the first of April. I think it more likely that it will be held in the month of May, or conceivably as far away as the end of next summer; the interim season for which this Committee is constituted extends all the way to 1963.

We might, however, hold a hearing during the short session when we are all in Sacramento, in which case it will probably be during the month of March. But frankly, I don't want to squander your testimony on such a short Committee as this. I think it will be of great interest to the other members at least of the Subcommittee, if you are agreeable --

MR. MITLER: Surely.

CHAIRMAN RATTIGAN: -- we will make every effort to have you present in person at our next Subcommittee or full Committee hearing on the subject.

MR. MITLER: Perhaps I could document some of these things, because they all come from official hearings or official investigations, some of them in other states.

CHAIRMAN RATTIGAN: For the record, will you identify yourself?

MR. MITLER: Well, I am Ernest Mitler. I am a member of the New York Bar, and I was retained as a contract agent by the California State Social Welfare Department to investigate irregular adoption practices in California. I was retained as an employee of the Child Welfare League of America, and at present I am drafting a new adoption state law for the State of Nevada.

CHAIRMAN RATTIGAN: May I ask, have you made a report to the State Department of Social Welfare?

MR. MITLER: Yes.

CHAIRMAN RATTIGAN: Has it ever been published by the Department?

MR. MITLER: No.

CHAIRMAN RATTIGAN: When did you make it?

MR. MITLER: Can I ask the date? I am not sure.

CHAIRMAN RATTIGAN: Well, approximately. Within a matter of months.

MR. MITLER: Well, I think it is last summer. Last summer?

VOICE FROM THE AUDIENCE: I think it was, yes.

MR. MITLER: Last summer.

CHAIRMAN RATTIGAN: Do you know whether or not the State Department of Social Welfare intended or now intends to make your report public?

MR. MITLER: I don't know. I know that it was put into more readable form by Al Deutsch, and he passed away. He is a man in the social welfare field. That is the last I know of it.

It was intended, I was told, to be released to the public and Deutsch rewrote the material.

CHAIRMAN RATTIGAN: And you are citing considerable data of a national scope, as well as --

MR. MITLER: Yes.

CHAIRMAN RATTIGAN: --California, are you not?

MR. MITLER: Yes. But those matters all relate to activities happening inside and outside of the state.

CHAIRMAN RATTIGAN: I understand that. For the information of those present, I might point out that what caught my eye in Mr. Mitler's statement, and the reason I want to hear from him further and at greater length in the future, is the categorical statement: "I strongly believe in the elimination and outlawing of all private placements for adoption in California." And concluding with recommendations which assume that independent placements will undoubtedly be retained in California law, making the following suggestions:

"1. That no petition for adoption can be filed without an affirmative statement establishing that California placement laws have not been violated," and we have to go the route on that one, too.

"2. A system should be developed in which hospitals are required to notify a state licensed social agency whenever an unmarried mother enters the



hospital."

Presumably as a maternity case.

MR. MITLER: Yes.

CHAIRMAN RATTIGAN: I am skipping now.

"3. The entire California adoption law should be rewritten in a grammatical and clear way."

And I might commend your attention to Assembly Bill 1951, which was introduced and referred to interim study during the last session of the Legislature.

"4. Every effort should be made to have someone else, other than Phillip Adams, write the section on adoption in the book published by the Committee for the Continuing Education of the Bar."

And citing two basic facts derived from Mr. Mitler's 10 years of experience in the adoption field:

"1. All protections and controls imposed in private placements after the child has been physically transferred to a foster home for adoption are illusory and completely ineffectual. All safeguards must be taken during the pre-placement period to block a dangerous or undesirable placement.

"2. Social controls cannot be imposed through criminal prosecution. It is a new and often strange concept to the community, as well as law enforcement officers, that unlawful child placing should constitute a crime. Thus, the only means of prohibiting the baby selling racket is by declining to recognize legally the results of the placements made in violation of the law. This goal can only be achieved without hardship by requiring all placements to be made through licensed social agencies."

I am sorry, Mr. Mitler, that we didn't hear from you earlier and at length, because you have had considerable experience and you make some rather dramatic recommendations.

MR. MITLER: May I make one statement? I am talking in all the statements not about individual cases or a casual placement. I am talking here about people who enter into the business systematically, no matter how it is camouflaged. It is not in reference to individual placements made by attorneys. All attorneys in the United States, or most of them, had some hand in it.

CHAIRMAN RATTIGAN: You will very definitely be notified of our next hearing because we would very much like to hear from you, at least the entire Subcommittee. You will be hearing from us again. I hope we will from you.

MR. MITLER: Thank you, Mr. Chairman. Thank you, Miss White.

CHAIRMAN RATTIGAN: That concludes the meeting of the Subcommittee which has dwindled to a minority of one. We very much appreciate the cooperation that all of you have shown, or participation in the proceedings, as well as your indulgence. My opinion, as discussed with other members of the Subcommittee, is that this has been a very fruitful meeting and perhaps we will accomplish something in the next legislative year that won't please everybody, but perhaps it will clarify the situation.

Thank you all again for coming. The meeting of the Subcommittee stands adjourned.

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